Supreme Court, U.S.
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No.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ISLAMIC REPUBLIC OF IRAN,
Petitioner,
vs.
SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI; IERSPEX FINANCE N.V.,
Respondents.

PETITION FOR WRIT OF CERTIORARI
TO CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE

PETITION FOR WRIT OF CERTIORARI

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131 pp

QUESTION PRESENTED

Whether the Algerian Accords, as an executive agreement of the United States, and the act of state doctrine, as federal law, supersede California discovery laws and, therefore, preclude dismissal of an action for perceived failure to comply with state discovery laws.

PARTIES TO THE PROCEEDING

The Petitioner is the Islamic Republic of Iran. Pursuant to Supreme Court Rule 29.1, there is no parent or subsidiary to be listed.

The Respondents are Shams Pahlavi, aka H.I.H. Princess Shams Pahlavi and Ierspex Finance N.V. The Petitioner knows of no parent or subsidiary to be listed.

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No. _____

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1994

ISLAMIC REPUBLIC OF IRAN,
Petitioner,
vs.
SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI; IERSPEX FINANCE N.V.,
Respondents.

PETITION FOR WRIT OF CERTIORARI

The Islamic Republic of Iran ("IRAN") respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal, Second Appellate District, Division One.

OPINIONS BELOW

The opinion of the California Court of Appeal is unreported and reproduced herein as Appendix A. The California Supreme Court's denial of review is also unreported and reproduced herein as Appendix B. The opinions of the trial court are reproduced herein as Appendices C, D, E, and F.

JURISDICTION

The Court of Appeal rendered its judgment on March 9, 1994. (App. A1). The California Supreme Court denied Petitioner's Petition for Review on June 30, 1994. (App. B). The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(a).

EXECUTIVE AGREEMENT, CONSTITUTIONAL, EXECUTIVE ORDER AND STATUTORY PROVISIONS INVOLVED

1) The Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran ("The Algerian Accords"), paragraphs 12 and 14, (App. G);
2) U.S. Constitution Article VI, (App. I);
3) Executive Order No. 12284, Sections 1-101 and 1-104 (App. H);
4) California Code of Civil Procedure, Sections 2023, 2030 and 2031 (App. J);

STATEMENT

Parties

Respondent SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI ("SHAMS") is the sister of Mohammed Reza Pahlavi, the former Shah of Iran. As the Shah's sister, SHAMS is a member of the Pahlavi Dynasty. Respondent IERSPEX FINANCE N.V. ("IERSPEX") is a corporation which SHAMS organized

under the laws of the Netherlands Antilles. Petitioner IRAN succeeded the government of Shah Mohammed Reza Pahlavi.

Algerian Accords

In 1981 the United States Government signed the Declarations of the Government of the Democratic and Popular Republic of Algeria and the Undertakings of the Government of the United States of America and the Government of the Islamic Republic of Iran. These documents have come to be known as "the Algerian Accords." The Algerian Accords enable IRAN to enforce judgments and decrees in United States courts. (App. G).

Point IV of the Algerian Accords at Paragraph 14 provides:

> Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine in that *Iranian decrees* and judgments *relating to such assets should be enforced by such courts in accordance with United States law.* (Emphasis added.)

(App. G).

President Jimmy Carter signed Executive Order No. 12284 adopting the Algerian Accords language on enforcement of decrees and judgments. (App. H).

The Decree

IRAN issued a decree before entering into the Algerian Accords. That decree orders that all assets of the Pahlavi Dynasty, its branches, agents, and affiliates, whether movable or immovable, be returned to the underprivileged people of IRAN. That decree ("THE DECREE") is the subject of the instant case. (App. O).

Complaint and Demurrer

IRAN brought suit in the Los Angeles County Superior Court, State of California, to enforce THE DECREE against SHAMS and IERSPEX pursuant to the Algerian Accords.

SHAMS filed a Demurrer to IRAN's Second Amended Complaint urging that THE DECREE is not enforceable as a confiscation. IRAN opposed the Demurrer. The United States Government submitted a Suggestion of Interest to the trial court which opposed the Demurrer and classified THE DECREE as not a "confiscation." (App. P). The trial court denied the Demurrer and ordered SHAMS and IERSPEX to answer.

Discovery

After filing an Answer SHAMS served interrogatories and requests for production of documents under California state law ("the Discovery Requests") on IRAN. IRAN served responses to each of the Discovery

Requests. IRAN's responses consisted of various objections based on technical inadequacies in the Discovery Requests. IRAN also objected on the ground that the Discovery Requests violate the purpose and intent of the Algerian Accords. (App. K).

SHAMS moved to compel supplemental discovery responses. The trial court granted the motion to compel. The trial court rejected IRAN'S arguments that the Algerian Accords and the act of state doctrine barred discovery. (App. K). IRAN served supplemental responses which stated the same objections as the original responses.

Motion to Dismiss

Based on IRAN's initial and supplemental discovery responses, SHAMS moved to dismiss IRAN's Second Amended Complaint. IERSPEX, which propounded no discovery, joined the motion. IRAN opposed the motion based upon federal law in the Algerian Accords and the act of state doctrine. (App. L). The trial court declared that IRAN engaged in a discovery dereliction and rejected IRAN'S Algerian Accords and act of state doctrine arguments. (App. F). The trial court granted the Motion to Dismiss as to both SHAMS and IERSPEX as a discovery sanction under California Code of Civil Procedure Section 2023. (App. C, D, E, and F).

Court of Appeal

IRAN appealed the dismissal of its complaint to the California Court of Appeal, Second Appellate District. The Court of Appeal assigned the appeal to Division One. IRAN, SHAMS, and IERSPEX briefed the issues

on appeal. IRAN argued that the dismissal was improper because of superseding federal law in the Algerian Accords and the act of state doctrine. (App. I). Moreover, IRAN argued an abuse of discretion by the trial court in administering discovery sanctions. (App. M). The Court of Appeal held a hearing in the case and subsequently issued a written decision. (App. A).

The Court of Appeal relied heavily on a New York appellate decision involving IRAN which resulted in a dismissal on forum nonconveniens grounds. (App. A11). *See Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 467 N.E.2d 245 (N.Y. Ct. App. 1984), *cert. den.*, 469 U.S. 1108 (1985). The New York dismissal had nothing to do with discovery or discovery sanctions in litigation involving claims based on the Algerian Accords.

The Court of Appeal relied repeatedly, and out of context, on a comment by IRAN's counsel in the trial court that IRAN would "live or die" by its position. (App. A2, 9, and 18) The remark was not so explicit as to constitute what the Court of Appeal's claims, "that plaintiff would 'live or die' by its refusal to provide further responses [to discovery]." (App. A9).

The Court of Appeal found "no evidence of an agreement by the federal government to enforce the decree without allowing any discovery" in actions brought under the Algerian Accords. (App. A14-15). By so stating, the Court of Appeal rejected IRAN's United States Supreme Court case authority directly on point. *See United States v. Pink*, 315 U.S. 203 (1942), and *United States v. Belmont*, 301 U.S. 324 (1937).

The Court of Appeal also misinterpreted IRAN's reliance on a decision of the Seventh Circuit Court of Appeals. *See F. & H. R. Farman-Farmaian Cons. Eng. Firm v. Harza Eng. Co.*, 882 F.2d 281, 286 (7th Cir.

1989), *cert. den.* 497 U.S. 1038 (1990). IRAN cited the *Harza* case to emphasize that political considerations play no legitimate role in the trial court's decision. IRAN does not liken *Harza*'s details on expropriation to its case. The facts of *Harza* do not square with IRAN's case. Rather, *Harza* is relevant only on the issue of the interplay of political rhetoric, used to challenge an act of state, with application of the act of state doctrine. IRAN relies chiefly on *Pink* and *Belmont* to enforce THE DECREE.

Supreme Court of California

IRAN sought review of the Court of Appeal's decision in the California Supreme Court. (App. N). IRAN maintained the position that federal law in the Algerian Accords and the act of state doctrine preclude dismissal of its case due to a perceived state law discovery dereliction. The Supreme Court of California denied IRAN's petition for review. (App. B).

REASONS FOR GRANTING THE PETITION

REVIEW IS NECESSARY TO CORRECT MISAPPLICATION OF STATE LAW BY LOWER COURTS WHICH FLOUTS THE COMMANDS OF FEDERAL LAW.

This case presents a significant and rare opportunity for this Court to clarify for lower courts the supremacy of rights under federal executive agreements over state laws which, if applied, flout those federal rights. This case also affords an important opportunity to clarify the relationship between the act of state doctrine and state law discovery obligations. In addressing these important

issues, this Court has the opportunity to correct the erroneous decisions by lower courts by implementing the Algerian Accords and related Executive Order of former President Jimmy Carter.

I.

"United States Law" Under the Algerian Accords Is Incompatible with California's Discovery Law.

SHAMS and IERSPEX contended, and the lower courts ruled, that IRAN had to comply with California state discovery laws to enforce THE DECREE under the Algerian Accords. IRAN denies this. To determine whether IRAN had state law discovery obligations the Court must interpret the clear terms of the Algerian Accords.

The Algerian Accords are an executive agreement entered into by the United States Government. Treaties and executive agreements constitute United States law. U.S. Const. Art. VI. (App. I). The Algerian Accords specifically provide in Paragraph 14 for enforcement of Iranian decrees. The same paragraph states that United States courts should enforce such decrees "in accordance with United States law."[1] (App. G). This language

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[1] Paragraph 14's statement that "Iranian decrees and judgments . . . should be enforced . . . in accordance with United States law" in the Algerian Accords, should not mislead United States courts to think that United States law applies in full force and effect to actions seeking enforcement of Iranian decrees and judgments. Such a contention negates Paragraph 14's enforcement commands. Absent the Algerian Accords, IRAN could still seek enforcement of its decrees and judgments in the United States. However, Paragraph 14 requires that IRAN's decrees and judgments receive special

(continued)

states no discovery obligation. The scope of the application of "United States law" should be determined with reference to the United States' underlying enforcement commitment.

The terms of the Algerian Accords, their negotiation history, and interpretation by the United States Department of State (App. P) envisage enforcement of Iranian decrees in United States courts, to fulfill the United States' pledge of returning to Iran the Iranian nation's assets improperly taken by the Shah and his close relatives. Discovery is inconsistent with the spirit of the Algerian Accords and the United States' commitment to enforce Iranian decrees. Discovery is, in fact, no more than a defensive procedural device to undermine an Algerian Accords enforcement action.

Paragraph 14's command for enforcement "in accordance with United States law" obligates United States courts to enforce. The United States undertook the duty to return assets to IRAN. Paragraph 14's command is for an enforcement result. United States law is a means for enforcement under the paragraph 14, but not an end in itself to bar enforcement.

Paragraph 14 does not envisage evaluation of the underlying merits of IRAN's claim through procedural devices such as discovery under state law. Dismissal on state law discovery grounds flouts the Algerian Accords and, therefore, flouts federal law.

Like treaties, executive agreements must be interpreted based only upon the clear meaning of their terms unless an ambiguity exists. *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 180 (1982). Neither the

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(fn. continued)
treatment in accordance with United States law. The decision below negates the clear import of paragraph 14.

terms of the Algerian Accords, nor their spirit or history contemplate discovery obligations.

United States courts must recognize the supremacy of federal law and policy created by an executive agreement. The United States Supreme Court recognized the supremacy of federal law in interpreting another executive agreement, the Litvinov Agreement, under Article VI of the United States Constitution in *United States v. Pink*, 315 U.S. 203, (1942) and *United States v. Belmont*, 301 U.S. 324 (1937). The Litvinov Agreement memorialized an assignment to the United States of claims which the Soviet Union expropriated. The expropriated properties included corporations and bank deposits of pre-revolutionary Russian origin located *within* the United States.

In *Pink* and *Belmont*, the United States Supreme Court refused to evaluate Soviet expropriations under United States law and policy standards. The United States Government had endorsed the expropriations by entering into the Litvinov Agreement. Thus, the *Pink* and *Belmont* Courts allowed no due process or other challenges to the expropriations. The Court honored the Soviet expropriations and reversed the lower courts. IRAN's case is stronger than either *Pink* or *Belmont* because IRAN seeks to enforce no *assigned* rights. IRAN pursues its *own* rights under THE DECREE for return of assets.

As in *Pink* and *Belmont*, in this case the United States Government knew of THE DECREE's existence before entering into the Algerian Accords. Knowing of THE DECREE, the United States Government obligated United States courts, unconditionally, to enforce THE DECREE.

The United States Department of State acknowledged that the Algerian Accords' commands make IRAN's case

like *United States v. Pink, supra*, 315 U.S. 203, and *United States v. Belmont, supra*, 301 U.S. 324. (App. P1, fn. 6.). As in *Pink* and *Belmont*, the United States' policy favoring enforcement of THE DECREE could not be clearer.[2]

Pink relies on the supremacy of federal law over state law under U.S. Const. Art. VI to state:

> [S]tate law must yield when it is inconsistent with, or impairs the policy or provisions of a treaty or of an international compact or agreement [. . .] Then, the power of a State to refuse enforcement of rights based on foreign law which runs counter to the public policy of the forum [. . .] must give way before the superior Federal policy evidenced by a treaty or international compact or agreement.

315 U.S. at 230-231.

Discovery has no role in this case. The Algerian Accords are United States law and policy. SHAMS' Discovery Requests under California State law violate the Algerian Accords' direct mandate to United States

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[2] The Algerian Accords establish the Iran-U.S. Claims Tribunal to address issues under the Algerian Accords between IRAN and the United States Government, among others. For the Court's reference, IRAN has a claim pending with the Claims Tribunal complaining that the United States has not fulfilled its enforcement obligations under the Algerian Accords. The Iran-U.S. Claims Tribunal will monitor the instant proceedings, as the United States Government faces potential liability in the Claims Tribunal proceeding. IRAN maintains in this forum and the Claims Tribunal that the lower courts' actions in this case are inconsistent with the Algerian Accords, *Pink*, *Belmont*, and the United States Department of State's own statement of position in this case.

courts. The Algerian Accords require immediate and full enforcement of THE DECREE. Further, the federal government of the United States demands THE DECREE's enforcement. Therefore, dismissal on discovery grounds is an error which this Court should correct.

II.

THE DECREE is an Act of State Which SHAMS Cannot Circumvent Through Discovery.

As an act of IRAN, THE DECREE constitutes an act of state. Under the act of state doctrine, United States courts cannot adjudicate the validity of THE DECREE. State discovery laws cannot impede IRAN's right to enforce THE DECREE.

The United States Supreme Court embraced the act of state doctrine in *Underhill v. Hernandez*, 168 U.S. 250 (1897). In *Underhill*, the Court rejected a plaintiff's claims for damages arising out of his detention in Venezuela by Hernandez, a revolutionary leader of a new Venezuelan Government. The Court ruled that because the detention was the act of a foreign state, a United States Court was not competent to sit in judgment of the foreign state's act.

In *Underhill*, the Court stated language which has guided application of the act of state doctrine for nearly a century. Specifically, the *Underhill* court stated:

> Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one country will not sit in judgment

> on the acts of the government of another done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

168 U.S. at 252.

The *Underhill* Court stated further:

> If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government from the commencement of its existence are regarded as those of an independent nation.

Id. at 253. Through the Algerian Accords and otherwise, the United States Government has recognized the present government of IRAN. THE DECREE is an act of IRAN, concerning property belonging to IRAN. THE DECREE is an act of state and should be enforced.

The United States Supreme Court reaffirmed the act of state doctrine in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964). In *Banco Nacional*, the Supreme Court applied the act of state doctrine to uphold Cuba's expropriation of rights to sugar of Cuban origin. The expropriation came about through a law which followed Cuba's 1959 revolution. The Court rejected the expropriation opponent's conversion and breach of contract theories and declared that a counterclaim challenging the expropriation "must fail." *Id.* at 439.

In *Banco Nacional*, the expropriation opponent argued that a United States court should not recognize the

Cuban act of state due to animosity in political relations between the United States and Cuba. The Court replied, "We do not agree" with that contention. *Id.* at 410. The Court honored Cuba's expropriation. Similarly, THE DECREE should be enforced despite any political situation existing between the United States and IRAN.

The *Banco Nacional* Court confirmed the practicality and efficiency of the act of state doctrine stating:

> An inquiry by United States courts into the validity of an act of an official of a foreign state under the law of that state *would not only be exceedingly difficult but, if wrongly made, would be likely to be highly offensive to the state in question.*

Id. at 415, fn. 17 (emphasis added).

The extraterritorial exception to the act of state doctrine provides that, when inconsistent with the policies and law of the United States, our courts will not give extraterritorial effect to a confiscatory decree of a foreign state, even where directed against its own nationals. *Maltina Corp. v. Cawy Bottling Co.*, 462 F.2d 1021, 1025 (5th Cir. 1972), *cert. den.*, 409 U.S. 1060 (1972). The Court of Appeal mistakenly applied the extraterritorial exception to THE DECREE. (App. A17).

Republic of Iraq v. First National City Bank, 353 F.2d 47, (2nd Cir. 1965), *cert. den.* 382 U.S. 1027 (1966), is the lead case on the extraterritorial exception. In *Republic of Iraq* the court stated, "when property confiscated is within the United States at the time of the attempted confiscation our courts will give effect to acts of state 'only if they are consistent with the policy and law of the United States.' " 353 F.2d at 51. The *Republic of Iraq* court refused to enforce an Iraqi decree which

expropriated trust assets situated within the United States. However, in *Republic of Iraq*, no executive agreement favored decree enforcement, unlike *Pink, Belmont*, and the instant case. Additionally, in *Republic of Iraq*, the United States Department of State disclaimed any interest in the outcome of the litigation.

In this case, the United States Department of State has endorsed IRAN'S efforts to enforce THE DECREE through its Suggestion of Interest. The Department of State has also rejected the comparison of the instant case and *Republic of Iraq* made by SHAMS and IERSPEX. (App. P1, fn. 6). The Suggestion of Interest recognizes that IRAN seeks to enforce THE DECREE to return assets belonging to IRAN, rather than to confiscate. (App. P).

The trial and appellate courts failed to give THE DECREE the deference it warrants as an act of state. SHAMS and IERSPEX cannot look behind THE DECREE with discovery to evaluate its merits. To this point, California state discovery laws have flouted the act of state doctrine and the Algerian Accords. THE DECREE is a final, binding, and summarily enforceable governmental act. This Court should correct the lower courts' misapplication of the act of state doctrine.

CONCLUSION

The Petition for a writ of certiorari should be granted.

DATED: September 21, 1994.

Respectfully submitted,

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ISLAMIC REPUBLIC OF IRAN

APPENDIX A

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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

COURT OF APPEAL
SECOND DIST.
FILED
MAR 9 1994
Joseph A. Lane Clerk
/s/ Deputy Clerk

ISLAMIC REPUBLIC OF IRAN,
Plaintiff and Appellant,
v.
SHAMS PAHLAVI, etc., et al.,
Defendants and Respondents.

No. B072484
(Super. Ct. No. WEC 69489)

APPEAL from an order of the Superior Court of Los Angeles County. Irving A. Shimer, Judge. Affirmed.

Atkinson, Andelson, Loya, Ruud & Romo, Patrick A. Gunn, Thomas A. Lenz and Thomas W. Kovacich for Plaintiff and Appellant.

Loeb and Loeb, Robin Meadow and Harold A. Barza; Baker & Hostetler, Ralph Zarefsky and Penny M. Costa for Defendants and Respondents.

Plaintiff Islamic Republic of Iran brought this action against defendant Shams Pahlavi, aka H.I.H. Princess Shams Pahlavi, the sister of the late former Shah of Iran, and defendant Ierspex Finance N.V., a Netherlands Antilles corporation organized by Pahlavi. Iran sought judicial enforcement of a Decree of Imam which had ordered the confiscation of the Pahlavi Dynasty's assets. Allegedly the Shah and other royal family members, including Pahlavi, had diverted and embezzled funds from the government and people of Iran. Plaintiff's action sought to enforce the decree against defendants' substantial assets located in California.

In defiance of a court order granting Pahlavi's motion to compel discovery, plaintiff refused to comply on the ground that controlling federal law exempted it from discovery. The trial court dismissed the complaint against both defendants based on plaintiff's election to "live or die" by its refusal to comply with the discovery order.

The principal issue on appeal is whether federal law shields plaintiff from the discovery and dismissal orders. We affirm the judgment of dismissal.

BACKGROUND

Plaintiff filed this action in June 1981, almost 13 years ago. Unlike the subsequent amendments, the original complaint did not mention the decree. Instead, it alleged causes of action for constructive trust, fraud, accounting, conversion, and conspiracy.[1] Pahlavi, a Los Angeles resident, allegedly conspired with the Shah to enrich herself and members of the Pahlavi family unlawfully at the expense of the government and people of Iran. During the Shah's

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[1] One of the original defendants, Mehrdad Pahlbod, Pahlavi's husband, was dismissed from the action on March 11, 1987.

reign from 1941 to January 16, 1979, when the Shah fled Iran, Pahlavi allegedly abused her various government positions for her financial gain by accepting bribes and engaging in other corrupt practices which enabled her to divert about $3 billion from the Iranian government. Pahlavi allegedly used part of the embezzled funds to purchase and furnish a home in Beverly Hills and two condominiums in Los Angeles which she then conveyed to defendant Ierspex.

Two appeals were taken before service of process was finally deemed accomplished by this Division in December 1990. (*Islamic Republic of Iran v. Pahlavi* (Dec. 13, 1990) B044633 [nonpub. opn.], same cause (1984) 160 Cal.App.3d 620.)

Plaintiff filed an amended complaint in July 1991 which abandoned the original complaint's traditional causes of action in favor of a single cause of action entitled: "To Enforce Decree of Imam." According to the purported English translation of the decree, exhibit "A" to the amended complaint, Ruhollah Moussavi Khomeini apparently issued his "Decree of Imam Concerning Confiscation of the Pahlavi Properties" on February 28, 1979. It stated:

> "In the Name of God the Most Beneficient [sic]
>
> "The Islamic Revolutionary Council is charged by virute [sic] of this decree with confisacting [sic], in favour of the needy, the poor workers and employees, all movable and immovable properties of the Pahlavi Dynasty, its branches, agents and affiliates who during their illegal rule embezzled it [sic] from the Treasury of the Moslems, and deposit the movable [sic] in banks in the account of the Revolutionary Council or in the name of the undersigned. The immovables such as real estates [sic] and lands be [sic] confiscated and registered so that it [sic] may be spent for the needy from all classes, for constructing houses and creating jobs, etc. I order all the Islamic Revolutionary

> Committees throughout the country to deposit in a known bank account all the valuables obtained by them, and to notify the government that such valuables do not belong to the government but they have to do [sic] with the Revolutionary Council. Whatever is or would be obtaiend [sic] by the government functionaries should be deposited in the banks in the same account. Those who have obtained such properties must immediately hand it [sic] over either to the committees or the banks. Violators (of the above order) would be [sic] reprimanded."

Also attached as exhibits to the amended complaint were agreements entered into by Iran and the United States pertaining to the release of 52 of the original 66 United States nationals held hostage in Iran between November 4, 1979, and January 20, 1981.[2] The agreements, commonly

---

[2] "On January 16, 1979, following a period of political unrest, the Shah left Iran. In February 1979, the Empire was overthrown and was replaced by the present government which is the plaintiff in this action. Upon the Government of Iran's accession to power and continually thereafter, representatives of the government publicly called for the return of the Shah and members of his immediate family to Iran to stand trial for alleged crimes against the Iranian people; for the execution of the Shah and his family; and for the return to Iran of property the Shah and his family had allegedly stolen.

"On October 22, 1979, the Shah was admitted to the United States from Mexico for medical treatment. On November 4, 1979, the United States Embassy in Tehran was taken over by militant Iranian students and 66 Americans were seized as hostages. The students announced that the imprisoned Americans would be held until the United States returned the Shah to Iran for trial. The Government of Iran thereafter endorsed the actions of the students and indicated that the United States would not only have to return the Shah to Iran, but must also

(continued)

known as the Algerian Accords, were executed on January 19, 1981.

Paragraphs 12, 14 and 15 of the Accords are relevant to this action. They provided as follows:

> "12. Upon the making by the Government of Algeria of the certification described . . . above, the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, . . . the freeze order will remain in effect until such litigation is finally terminated. . . .
>
> "14. Upon the making by the Government of Algeria of the certification described . . . above, the United Sates will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

(fn. continued)
return all of his wealth in order to obtain the release of the hostages. 52 of the original 66 hostages remained prisoners in Iran for a total of 444 days. They were released on January 20, 1981, pursuant to an Agreement entered into by the Government of Iran and the United States." (*Islamic Republic of Iran v. Pahlavi* (Sup. Ct. 1982) 116 Misc.2d 590 [455 N.Y.S.2d 987, 988-989], rev'd on other grounds, (1984) 99 A.D.2d 1009 [473 N.Y.S.2d 801].)

"15. As to any judgment of a U.S. court which calls for the transfer of any property or assets to Iran, the United States hereby guarantees the enforcement of the final judgment to the extent that the property or assets exist within the United States."

The amended complaint further alleged that on January 19, 1981, President Carter had executed Executive Order 12284 (46 Fed.Reg. 7929 (1981)), implementing the foregoing provisions of the Accords. The executive order stated in relevant part:

"By the authority vested in me as President by the Constitution and statutes of the United States, . . . in view of the continuing unusual and extraordinary threat to the national security, foreign policy and economy of the United States upon which I based my declarations of national emergency . . ., in order to implement agreements with the Government of Iran, as reflected in [the Accords] dated January 19, 1981, relating to the release of U.S. diplomats and nationals being held as hostages and to the resolution of claims of United States nationals against Iran, and to begin the process of normalization of relations between the United States and Iran, it is hereby ordered that as of the effective date of this Order:

"1-101. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States within the control of the estate of Mohammed Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is hereby blocked as to each such estate or person

until all such litigation against such estate or person is finally terminated.

". . . .

"1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts within the United States, suggestions of interest reflecting that such is the position of the United States, and that it is also the position of the United States that Iranian decrees and judgments relating to the assets of the former Shah and the persons described in Section 1-101 should be enforced by such courts in accordance with United States law." (Emphasis omitted.)

On August 1, 1991, plaintiff filed the operative second amended complaint which reiterated the allegations of the first amended complaint.

On August 16, 1991, Pahlavi (joined by Ierspex) demurred to the second amended complaint, citing plaintiff's failure to state a cause of action and the expiration of the statute of limitations. The demurrer was set for hearing on October 8, 1991.

Prior to the hearing and upon the request of plaintiff's counsel, the Department of Justice submitted a "Suggestion of Interest of the United States of America." The suggestion of interest stated in relevant part:

"1. The Iranian decree refers to property allegedly 'embezzled' from Iran by defendants. It can be interpreted as a demand for return of property to the extent that the property is shown to have been illegally taken from the Iranian treasury. As such, it does not constitute, as defendants suggest, a 'naked confiscation of property,' and may be enforced in U.S. court[s] in accordance with the provisions of U.S. law, including due process for defendants.

" '[D]ue process is flexible and calls for such procedural protections as the particular situation demands.' *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). 'The essence of due process is the requirement that "a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." ' *Mathews v. Eldridge*, 424 U.S. 319, 348 .... In the context of this case, if defendants are provided an opportunity to appear before this Court and respond to Iran's allegations concerning the assets allegedly taken illegally from Iran, then the requirements of due process will have been met." (Fn. omitted.)

The trial court overruled the demurrer on November 27, 1991, and defendants subsequently answered the complaint.

On May 4, 1992, Pahlavi moved for an order compelling plaintiff to provide further responses to Pahlavi's first set of interrogatories and second set of document requests served on January 27, 1992. (Code Civ. Proc., §§ 2030, subd. (1), 2031, subd. (1).) As accurately described in Pahlavi's moving papers, the disputed "interrogatories and requests fall into three related categories: the facts and documents supporting the Islamic Republic's contention that Pahlavi misappropriated or embezzled the wealth of the people of Iran; the procedures, facts, and documents relied upon by the Islamic Republic in promulgating the decree it now seeks to

have enforced by this Court; and the procedures followed by the Islamic Republic in administering the decree to confiscate defendant's assets in Iran." In particular, defendants sought production of the original decree and identification of the person who translated the English version attached as an exhibit to the complaint.

Plaintiff's common objection to each interrogatory or document request was "that it violates the purpose and intent of the [Accords] . . . . Pursuant to the Algerian Accords, the courts of the United States are obligated to enforce the Decree of February 28, 1979 which is the basis of IRAN's amended Complaint. IRAN interprets this [interrogatory or request] to challenge and question the bases for [or to seek documentation which 'supports'] the subject Decree and on such grounds IRAN expressly objects to this [interrogatory or request] on the grounds that it seeks information which is not relevant to enforcement of the subject Decree and which is not reasonably calculated to lead to the discovery of admissible evidence."

In addition, plaintiff raised the objections of ambiguous, unintelligible, overly broad, and burdensome. Following a conference with Pahlavi's counsel, however, plaintiff withdrew these objections as to some of the discovery requests.

The trial court granted the motion to compel further responses on June 2, 1992. Plaintiff responded that it would "stand on its [prior] responses."

On August 20, 1992, Pahlavi moved (later joined by Ierspex) to dismiss the action for plaintiff's failure to comply with the discovery order. (Code Civ. Proc., § 2030, subd. (b)(4)(C).) At the dismissal hearing, plaintiff's counsel stated that plaintiff would "live or die" by its refusal to provide further responses. The trial court granted the dismissal motion of both defendants after satisfying itself of the futility of requiring Ierspex to propound its own discovery

requests when plaintiff would continue to object.[3]

The judgment of dismissal was entered on September 17, 1992, and this appeal followed.

ISSUES

Plaintiff contends (I) the Accords and (II) the act of state doctrine preclude defendants, as a matter of federal law, from conducting discovery regarding the decree. Alternatively, plaintiff asserts (III) it was an abuse of discretion to order dismissal instead of a lesser sanction.

DISCUSSION

I

Plaintiff contends paragraph 14 of the Accords, which requires the enforcement of Iranian decrees in accordance with United States law, prohibits defendants from "evaluati[ng the decree] through any means, including discovery."

Interpretation of the Accords must begin with the language of the agreement itself. "The clear import of treaty language controls unless 'application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories.' *Maximov v. United States*, 373 U.S. 49, 54 (1963) . . . . ." (*Sumitomo Shoji America, Inc. v. Avagliano* (1982) 457 U.S. 176, 180.)

---

[3] In a passing reference in its opening brief, plaintiff states Ierspex was not entitled to dismissal because it had not propounded any discovery requests. Because plaintiff has failed to cite any authorities in support of its position or even to argue the issue, we deem the point to be waived. (*Jablonski v. Royal Globe Ins. Co.* (1988) 204 Cal.App.3d 379, 392.)

Federal law controls. "Plainly, the external powers of the United States are to be exercised without regard to state laws or policies. The supremacy of a treaty in this respect has been recognized from the beginning .... And while this rule in respect of treaties is established by the express language of cl. 2, Art. VI, of the Constitution, the same rule would result in the case of all international compacts and agreements from the very fact that complete power over international affairs is in the national government and is not and cannot be subject to any curtailment or interference on the part of the several states." (*United States v. Belmont* (1937) 301 U.S. 324, 331; *United States v. Pink* (1942) 315 U.S. 203, 217-218.)

This is not the first time plaintiff has relied upon paragraph 14 of the Accords to restrict state judges in their exercise of discretion. In 1984 the New York Court of Appeals rejected Iran's claim that paragraph 14 of the Accords precluded the dismissal on forum non conveniens grounds of Iran's action to recover the New York assets of the former Shah and his wife. (*Islamic Republic of Iran v. Pahlavi* (N.Y. Ct. App. 1984) 62 N.Y.2d 474 [478 N.Y.S.2d 597, 467 N.E.2d 245], cert. den. (1985) 469 U.S. 1108.) Because plaintiff raises the same or analogous points and authorities as it did in the New York case, we quote liberally from the relevant portions of that opinion:

The Accords "provided that the United States Government would take certain steps in connection with legal actions involving the Shah's [or his immediate family member's] property. Specifically, the United States agreed to freeze the Shah's assets within this country, to inform United States courts that in any litigation involving Iran and the Shah's estate sovereign immunity and the Act of State doctrine were not available as defenses and to guarantee the enforcement of any final judgments involving these matters. Any claimed failure of the United States to meet these treaty obligations was made subject to arbitration between the signatories in a

specially designated international tribunal and its award of damages to plaintiff for the breach could be enforced in the courts of any nation. In addition, a summary statement issued by the United States Government prior to the signing of the Accords stated that it would advise American courts of the right of the Iranian government to bring an action in this country to recover the Shah's [or his close family member's] assets. Plaintiff contends these promises preclude New York courts from dismissing the action on *forum non conveniens* grounds.

". . . .

"Plaintiff asserts . . . that various statements issued by the State Department when read in conjunction with these treaties evidence a commitment by the United States to assure that New York courts would entertain plaintiff's claim. It refers particularly to a State Department summary of the United States position on the Iranian situation, which indicated that the Federal Government would 'facilitate any legal action' brought by the government of Iran to recover on claims to the former Shah's assets and request the court's assistance in obtaining information about such assets [citation].

". . . We have no difficulty interpreting the Accords and the extraneous evidence submitted by the parties to determine that the United States Government did not guarantee plaintiff a New York forum for its claim. Neither the agreements nor the statement of the Summary Report indicates otherwise when analyzed in terms of the natural and ordinary meaning of the words used [citations]

. . . .

"The precedents cited by plaintiff are not helpful (. . . *United States v. Pink*, 315 U.S. 203 . . .; *United States v. Belmont*, 301 U.S. 324 . . .).

Those cases concern the broad powers of the Federal Government to . . . implement the right of the Soviet government (by assignment to the United States) to recapture Russian assets held by Americans or American institutions in this country (*United States v. Pink, supra; United States v. Belmont, supra*). Such commitments of the Federal Government to resolve claims between the signatories or nationals are viewed liberally because unless resolved the claims may provide continuing irritations and conflicts which interfere with peaceful relations between the nations. Similar commitments are made in Points I-III of the . . . Accords and are not at issue here. This is litigation by a foreign government against its own national who happened to be within the State of New York at the time this suit was commenced. It involves an internal dispute, not normally a matter considered in the exercise of treaty powers and a matter which does not generally engage the national interest to the same extent as claims by nationals of one signatory nation against the other signatory nation [citation].

"The parties have culled statements from the various documents and communiques and the testimony of witnesses before the Senate allegedly supporting their respective positions. The evidence suggests, however, that the State Department recognized the problems inherent in this litigation and the restraints of federalism in our system of government and that, as Mr. Warren Christopher, the United States negotiator, stated in his testimony before the Senate, the courts would have to decide whether plaintiff had 'a right [to maintain this action] within our legal system' (Senate Committee on Foreign Relations Hearing, 97th

> Cong., 1st Sess, Feb. 17, 1981, at p. 56). The United States agreed that plaintiff would not be foreclosed from pursuing its claim in our courts by preclusive doctrines of international law but it did not undertake to guarantee the opportunity for plaintiff to prove its claim in the New York courts. The United States has met its commitment to 'facilitate' this lawsuit by freezing the Shah's assets and by advising the courts that the Act of State doctrine and sovereign immunity principles are not to apply [as defenses] to plaintiff's claim. Nothing in the record or in its communication to the trial court suggests that a promise was made that it or the courts would do more." (*Islamic Republic of Iran v. Pahlavi, supra,* 62 N.Y.2d at pp. 484-487 [478 N.Y.S.2d at pp. 602-604].)

Turning to this case, we conclude nothing in the Accords and the extraneous evidence submitted by the parties constituted a promise by the United States government that Iran need not comply with court-ordered discovery in its actions to enforce the decree against the former Shah and his close family members. The limited promises contained in the Accords included the agreement to notify the appropriate courts that Iranian decrees should be enforced in accordance with United States law. The United States government has complied with the promise in this action.

Executive Order 12284 directed the Attorney General to prepare suggestions of interest notifying the courts that the act of state doctrine and sovereign immunity principles will not bar litigation by Iran to recover property of the former Shah or his family alleged to belong to Iran. The Department of Justice's suggestion of interest filed in the trial court complied with the president's directive without mentioning how discovery should or should not be conducted in this case. The Department of Justice merely suggested that the complaint "be interpreted [at the demurrer state] as a demand

for return of property *to the extent that the property is shown to have been illegally taken* from the Iranian treasury." (Emphasis added.) Iran's refusal to produce any discovery on this critical issue has undercut the basis for the Department of Justice's preliminary interpretation of the complaint.

In conclusion, we find no evidence of an agreement by the federal government to enforce the decree without allowing any discovery.

II

Plaintiff contends the federal act of state doctrine precludes California courts from questioning or judging the Decree of Imam.

The act of state doctrine precludes the elevation of a state policy over an international agreement between the United States and a foreign power. "[E]very sovereign state must recognize the independence of every other sovereign state; . . . the courts of one will not sit in judgment upon the acts of the government of another, done within its own territory." (*United States v. Belmont, supra,* 301 U.S. at p. 327.)

The "extraterritoriality exception" to the act of state doctrine applies when "the act of confiscation [was] not . . . complete within the confiscating state. [I]f a foreign state has made a confiscatory 'taking,' an act offensive to American properties, American courts will not lend their assistance to making the confiscation effective . . . . But it is the exception that fails if the confiscation was complete within the foreign state in the sense that all of the firm's assets and operations were there, and the victim is trying to get an American court to undo the confiscation." (*F. & H.R. Farman-Farmaian Cons.. Eng. v. Harza Eng.* (hereafter *Harza*) (7th Cir. 1989) 882 F.2d 281, 286.

Plaintiff's reliance on *Harza* is misplaced. The plaintiffs in *Harza* were the former owners of a nationalized Iranian

corporation. They sued an American company that owed fees to their former firm for work done in Iran. The Iranian government, however, had seized the former firm's claim against the defendant. The court dismissed the action after refusing to undo the Iranian government's completed confiscation of the claim in Iran. The exception did not apply because the seizure was complete in Iran.

Here, on the other hand, defendants' assets are in California and thus the seizure was not complete in Iran. On this record it appears that only an American court could compel defendants to turn over their assets located in California. We know of no basis for ordering such an involuntary transfer in the total absence of any proof of plaintiff's superior claim to those assets.

Plaintiff relies solely on the decree, which we deem insufficient to authorize its unquestioned judicial enforcement in this state. Our determination is consistent with federal law. As was explained by the *Harza* court, "if the [nationalized firm] had assets in Chicago, and the Iranian board of liquidators brought suit here to obtain control of those assets in conformity with the Iranian decree seizing the firm, the suit would fail. [Citations.]" (*Harza, supra*, 882 F.2d at p. 286.)

This case would be more analogous to *Harza* if Pahlavi had filed suit to recover her assets located and confiscated in Iran. Under *Harza*, the exception to the act of state doctrine would not apply and American courts would not undo the completed act of confiscation in Iran.

Because Iran is seeking the extraterritorial enforcement of its decree, this case more closely resembles *Republic of Iraq v. First National City Bank* (2d Cir. 1965) 353 F.2d 47. There the Iraqi government had issued a decree confiscating all assets of the former dynasty of King Faisal II. When the Iraqi government filed suit in New York to enforce its decree, the court dismissed the action, stating: "Extraterritorial enforcement of the Iraqi ordinance as to property

within the United States at the date of its promulgation turns on whether the decree is consistent with our policy and laws. We perceive no basis for thinking it to be. Confiscation of the assets of a corporation has been said to be 'contrary to our public policy and shocking to our sense of justice,' [citations]. Confiscation of the assets of an individual is no less so, even if he wears a crown. [Citation.]" (*Id.* at p. 51, fn. omitted.)

As in *Republic of Iraq*, the "only cases cited to us that might seem to suggest a deviation from this view are *United States v. Belmont*, [*supra*,] 301 U.S. 324, . . . and *United States v. Pink*, [*supra*,] 315 U.S. 203 . . . ." (*Republic of Iraq v. First National City Bank*, *supra*, 353 F.2d at p. 52.) Those cases, as discussed above, reaffirmed the supremacy of treaties, international compacts, or agreements over state laws or policies. Although the Accords undoubtedly take precedence over conflicting state laws or policies, no conflict exists between the United States government's limited promises and the lower court's discovery and dismissal orders. Under these facts, enforcing the decree in the absence of properly ordered discovery would violate our constitutional "guarantees of due process in the Fifth and Fourteenth Amendments [and] the specific prohibitions of bills of attainder in Article I. [Citations.]" (*Ibid.*)

We conclude the exception to the act of state doctrine applies to this case.

III

Conceding the standard is abuse of discretion (*Young v. Rosenthal* (1989) 212 Cal.App.3d 96, 114), plaintiff contends reversal is warranted because the trial court exhibited animosity and a desire to punish plaintiff for seeking to enforce the decree. We disagree.

The record supports the trial court's finding that plaintiff's refusal to comply with the discovery order was willful. (*Security Pacific Nat. Bank v. Bradley* (1992) 4 Cal.App.4th 89, 97-98.) As previously discussed, neither the Accords nor the act of state doctrine authorized plaintiff's conduct. Plaintiff's decision to "live or die" by its refusal to comply with the court order constitutes ample evidence to support the dismissal order.

The record does not support plaintiff's claim that the trial court "singled out and punished IRAN for political and religious repugnance." On the contrary, the record demonstrated the trial court's desire to fairly and justly apply the applicable laws to this case. To the extent any personal views were expressed, nothing indicates those views prejudiced the court in issuing the appropriate discovery and dismissal orders.

Plaintiff's claim that it had "no knowledge" the case might be dismissed is contradicted by the record. The moving papers clearly stated, pursuant to statute, that the sanction requested was dismissal. (Code Civ. Proc., § 2023, subd. (c).)

Plaintiff's assertion that "[t]he dismissal should be reversed since no sanctions should have been imposed" indicates its continued unwillingness to settle for anything less than the blind enforcement of the decree. Under the facts of this case, federal law does not support plaintiff's claim for extraterritorial enforcement.

We conclude the trial court did not abuse its discretion in dismissing the action.

DISPOSITION

We affirm the judgment. Respondents are awarded costs.

NOT TO BE PUBLISHED.

ORTEGA, Acting P.J.

We concur:

VOGEL (Miriam A.), J.

MASTERSON, J.

APPENDIX B

BEST AVAILABLE COPY

Second Appellate District, Division One,
No. B072484 S039302

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

IN BANK

SUPREME COURT
FILED
JUN 30 1994
Robert Wandruff Clerk

Deputy

ISLAMIC REPUBLIC OF IRAN, Appellant

v.

SHAMS PAHLAVI, Etc. Et Al., Respondents

Appellant's petition for review DENIED.

Mosk, J. did not participate.

LUCAS
Chief Justice

APPENDIX C

BEST AVAILABLE COPY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE SEP 17 1992 DEPT WEM

HONORABLE I Shimer Judge Deputy Clerk _____

HONORABLE Judge Pro Tem Electronic Recording Monitor

Deputy Sheriff C Gonzales, Reporter
(parties and counsel checked if present)

1:30 PM WEC 069489

ISLAMIC REPUBLIC
OF IRAN
vs.
PAHLAVI, SHAMS-etc-et al

Atkinson, et al.
Patrick Gunn
Loeb & Loeb
By Harold Barza
Counsel for Plaintiff

Baker & Hostetler
By Ralph Zarefsky
Counsel for Defendant

NATURE OF PROCEEDINGS:
DEFT (SHAMS PAHLAVI)

1. MOTN TO DISMISS;
2. MOTN TO DISMIs;

Pahlavi motion to dismiss the entire action per CCP section 2023 for abuse of discovery is granted. Attorney order of dismissal.

Motion of Ierspex is granted per CCP section 2023. Attorney order.

Judgment signed and filed.

[ ] It is stipulated (not stipulated) that Commissioner _____ may hear of this matter as Judge Pro Tem (by moving party/responding party).

[ ] TRANSFERRED TO/FROM DEPARTMENT _ _ _ _ _ _
[ ] Court disqualifies itself
[ ] 170.6 CCP affidavit filed
[ ] OFF CALENDAR [ ] On court's own motion
[ ] No Appearance [ ] At request of moving party
[ ] By stipulation
[ ] CONTINUED TO _ _ _ _ _ _ IN DEPT. _ _ _ _ _ _ _
AT _ _ _ _ _AM/PM
[ ] On court's own motion [ ] Stip. to be filed
[ ] On oral/written stipulation [ ] OSC Discharged
[ ] REQUEST OF [ ] Moving party
[ ] Respondent(s) [ ] Per Ex Parte Order of _____
[ ] TRO to remain in full force and effect
[ ] TRO dissolved
[ ] MOTION: [ ] granted as prayed
[ ] denied [ ] with/without prejudice
[ ] argued and taken under submission
[ ] DEMURRER: [ ] sustained/ [ ] overruled
[ ] with/without leave to amend
[ ] _____ days to amend/answer
[ ] JUDGMENT [ ] ORDER TO BE PREPARED BY:
[ ] Moving party [ ] Responding party [ ] Clerk
[X] NOTICE: [ ] Waived [X] By moving party
[ ] By respondent(s)
[ ] PETITIONER(S) IS/ARE SWORN AND TESTIFIES/ TESTIFY
[ ] PETITION IS GRANTED (AS AMENDED)
[ ] ORDER/JUDGMENT IS SIGNED AND FILED

MINUTES ENTERED
SEP 17, 1992
CLERK

DEPT.

APPENDIX D

BEST AVAILABLE COPY

Ralph Zarefsky
Penny M. Costa
Baker & Hostetler, McCutchen Black
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Attorneys for Defendant,
SHAMS PAHLAVI

FILED
SEP 17
County Clerk
By /s/ Gail Moore
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ISLAMIC REPUBLIC OF IRAN,
Plaintiff,

v.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI; MEHRDAD PAHLBOD, aka MEHRDAD PAHLABOD; IERSPEX FINANCE N.V.; DOES 1 through 999, inclusive,
Defendants.

CASE NO. WEC 069489
JUDGMENT

This matter came before the Court on the Motions of Defendant Shams Pahlavi, joined in by defendant Ierspex, to dismiss the action for plaintiff's failure to comply with this Court's order of June 2, 1992 ordering plaintiff 1) to respond

without objection to Pahlavi's First Set of Interrogatories; 2) to provide a verified response to Pahlavi's Request for Production of Documents (Set Two); and 3) to Produce Responsive Documents to Pahlavi at the office of Pahlavi's counsel on August 7, 1992. The Court, having reviewed the matter, heard oral argument and being fully informed, grants the motion.

Accordingly, IT IS ORDERED, ADJUDGED AND DECREED that plaintiff Islamic Republic of Iran have and take nothing by its Second Amended Complaint herein, and that the action is dismissed with prejudice, defendants to recover their costs. [in the sum of $_____]

Dated: _____, ~~1992~~.

/s/ Shimer
Judge of the Superior Court

APPENDIX E

BEST AVAILABLE COPY

Ralph Zarefsky
Penny M. Costa
Baker & Hostetler, McCutchen Black
600 Wilshire Boulevard
Los Angeles, California 90017
(213) 624-2400
Attorneys for Defendant,
SHAMS PAHLAVI

ORIGINAL FILED
SEP 22 1992
County Clerk

Copy supplied by
(√) Applt. ( ) Resp

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ISLAMIC REPUBLIC OF IRAN,
Plaintiff,

v.

SHAMS PAHLAVI, aka H.I.H. PRINCESS SHAMS PAHLAVI; MEHRDAD PAHLBOD, aka MEHRDAD PAHLABOD; IERSPEX FINANCE N.V.; DOES 1 through 999, inclusive,
Defendants.

CASE NO. WEC 069489
NOTICE OF ENTRY OF JUDGMENT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, on September 17, 1992, the above-entitled Court granted the motions of

defendant Shams Pahlavi, joined in by defendant Ierspex Finance N.V., to dismiss this action for plaintiff's failure to comply with the Court's Order of June 2, 1992, ordering plaintiff (1) to respond without objection to Pahlavi's First Set of Interrogatories; 2) to provide a verified response to Pahlavi's Request for Production of Documents (Set Two); and (3) to produce responsive documents to Pahlavi at the office of Pahlavi's counsel on August 7, 1992.

The judgment dismissing the action in its entirety with prejudice was filed and entered on September 17, 1992. A true and correct copy of the judgment is attached hereto.

Dated: September 22, 1992.

RALPH ZAREFSKY
PENNY M. COSTA
BAKER & HOSTETLER,
McCUTCHEN BLACK

/s/ Penny M. Costa
Penny M. Costa

Attorneys For Defendant,
SHAMS PAHLAVI

APPENDIX F

BEST AVAILABLE COPY

TRIAL COURT TRANSCRIPT OF HEARING ON SHAMS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

LOS ANGELES, CALIFORNIA;
THURSDAY, SEPTEMBER 17, 1992
DEPARTMENT WE M HON. IRVING SHIMER, JUDGE
APPEARANCES: (See title page.)

(Electronic Recording)

THE COURT: Islamic Republic of Iran versus Pahlavi.

MR. GUNN: Good afternoon, your Honor. Patrick Gunn of Atkinson, Andelson, Loya, Ruud and Romo on behalf of the Plaintiff and responding party.

MR. ZAREFSKY: Good afternoon, your Honor. Ralph Zarefsky on behalf of Defendant Pahlavi.

MR. BARZA: Good afternoon, your Honor. Hal Barza of Loeb and Loeb, on behalf of Defendant Ierspex Finance.

THE COURT: Go ahead, Mr. Gunn.

I gave you a long explanation.

MR. GUNN: You did, your Honor, and I appreciate that. There are only a few points I'd like to raise.

Most importantly, your Honor, in your tentative you raised the intentions of Congress and the president in executing the Algerian Accords.

I would urge the Court that that is an issue of fact to be raised at the trial. At this point to be evaluated as a point of speculation for all, the Court and ourselves.

THE COURT: I was responding to your argument and your citation of a representative of the State Department, in your argument, that the Congress of the United States and two presidents created a situation in which the Republic of Iran could file a lawsuit, and could demand a trial, and could

refuse to comply with any of the laws of the state in which the lawsuit is filed.

That's essentially been your position throughout.

* * *

So then we have a discovery motion. After discovery demands — I mean, you're suing for what? How many billions of dollars are you asking from these Defendants?

MR. GUNN: It's unspecified, your Honor.

THE COURT: But isn't it in terms of billions?

MR. GUNN: It is.

THE COURT: Okay. So you're suing these people for billions of dollars, and they served demands for discovery, to which your response is, we'll see you at the trial, because we don't have to provide any discovery on an interim basis.

They filed a motion to compel discovery. And I ordered discovery. And where normally I give people 20 days to respond, where there's been an outstanding discovery request on the theory that they've already had more than 30 days within which to respond, plus the motion time, I give them only 20 days.

Here, because I wanted to bend over backwards to give the Plaintiff an opportunity to consider your explanation to the foreign ministry or to the Iranian Justice Department, of the risks they were undertaking by their conduct, I gave you 60 days instead of the usual 20, on the theory that you would explain to them that if I believe that I have to give the Defendants a reasonable opportunity under California law to defend themselves against these charges, where billions of dollars are being sought for them, that if you — if your client stands on its position, the lawsuit would be at an end.

I assumed, being the good lawyer that you are, that you've advised the people in Tehran of that. And I assume when you come back and you say to me in your papers, we don't have to supply any of the discovery, because Jimmy Carter

and Ronald Reagan sold the Defendants down the river, and took away from them their right to knowingly prepare a defense to the lawsuit, and require that they go forward to a trial some day where they wait for the surprises to pop out of the box.

I assumed you had explained to them that that's not how we do things. And when I talked about the intention of Congress, I was referring to your argument in your papers, and to the language in the Algerian Accords which made clear that while the US Government took away from the Defendants certain defenses that they might otherwise be entitled to assert. And we have honored the Accords in that respect.

When I overruled their demur to your complaint, I acknowledged that the Algerian Accords took away certain defenses they might otherwise be able to assert.

I also pointed out that in the Algerian Accords it is clear that the lawsuit or lawsuits must be maintained otherwise in accordance with US law.

You give me a long involved argument about whether its confiscatory or not. That's not my concern. As far as I'm concerned, this is a lawsuit for damages. And lawsuits for damages in this court are governed by domestic laws, whatever they may be, subject to higher laws.

The higher laws represented by the Algerian Accords have been more than completely honored in this court.

In the New York situation, Iran was thrown out on a jurisdictional point, right?

MR. GUNN: They were, your Honor.

THE COURT: We rejected that approach. Our courts steadfastly took the position that if personal jurisdiction was obtained over the Defendants, the lawsuit would go forward here. And it has gone forward here.

When I was confronted directly with the responsibility to decide whether they could be sued for these crimes which are alleged have been committed by the shah and members of his family, I said the United States Government committed to the Iranian Government that this lawsuit could be maintained. And I'm going to honor that commitment, and I have.

But, that doesn't mean that I have to buy the position that you don't have to supply discovery.

Now, I gather, and I'm not — I don't want to invade any privileged communications between your client and yourself. I'm assuming your client has decided, for whatever its reasons, to accept the fact of the dismissal of the case at this time, for whatever its reasons. And I don't have to speculate about those.

All I have to do is deal with Code of Civil Procedure section 2023, which says that when there's an abuse of discovery, I have to consider a range of penalties which I may inflict on the litigant which is abusing discovery.

You don't argue to me for some lesser penalty. All you say is we don't have to supply the discovery and, therefore, Judge, all you should do is deny the motion and let it go to trial.

I'm telling you that I have reviewed the discovery demands, and interrogatories and the demand for production, and they cover issues of both liability and damage.

So, I don't understand that any lesser penalty, an evidentiary sanction or anything like that would be appropriate in the circumstances, especially when it's clear that the Plaintiff has no intention of complying any way. And the Plaintiff's position is it has no obligation to comply. And that's why I proposed to dismiss the case.

MR. GUNN: Your Honor, the next point I'd like to raise is with regard to Ierspex.

The discovery was served on behalf of Defendant Pahlavi. There is nothing in the discovery or the Plaintiff's decision

not to respond to it that precludes the Plaintiff from proceeding against Ierspex, although their liability may be derivative, nothing in the Court's order would prevent the Islamic Republic from putting on a case against Pahlavi, and then proceeding against Ierspex on a derivative theory.

THE COURT: I don't understand what that means. You're suing Ierspex as an instrument of the Defendant Pahlavi in the ownership of real estate, as best I can figure. Is that correct?

MR. GUNN: The action against Ierspex is based on the relationship between Pahlavi and Ierspex, your Honor.

THE COURT: I don't know what those words mean. Would you care to be a little bit more specific.

MR. GUNN: Financial ties, your Honor.

THE COURT: That she owns or controls Ierspex and, therefore, whatever relief the Plaintiff is entitled to against her should be applied against this instrumentality, whether it's an alter ego or not. Is that correct?

MR. GUNN: With an addition, your Honor. To the extent that the Plaintiff can prove assets of Pahlavi's were transferred to Ierspex, there would be a liability.

THE COURT: And you're saying even if I dismiss as to the transferor, I can't dismiss as to the transferee when the discovery requests relate to the overall alleged crimes, embezzlement or whatever.

MR. GUNN: The breadth of the discovery is not dispositive, your Honor. The issue here —

THE COURT: I didn't say it was. If I were to split — If I were to take your argument seriously, are you telling me that the Plaintiff is prepared to respond to exactly the same discovery requests from Ierspex?

MR. GUNN: I can't say that at this point, your Honor.

THE COURT: Are you hinting that to me?

MR. GUNN: I can't hint that, your Honor. All I'm saying is —

THE COURT: Are we playing a game?

MR. GUNN: No, we're not, your Honor. But, I'm only saying that the discovery requests were from Pahlavi.

To the extent that Plaintiff has refused to respond to those discovery requests, the Court can impose whatever sanctions it sees fit.

However, the sanction to dismiss the case against Ierspex does not rest on the issues relative to the discovery served on behalf of Pahlavi.

THE COURT: Can Ierspex do what it did here, namely file a joinder in the Pahlavi motion?

MR. GUNN: There's nothing barring that procedurally, your Honor.

THE COURT: Can Ierspex seek the terminating sanction under Section 2023 for the refusal to respond to Pahlavi's discovery demands?

MR. GUNN: I would say, no, your Honor. There's nothing at this point to indicate the Plaintiff will not be able to bear its case against Ierspex.

THE COURT: I'm not talking about from a factual standpoint. I'm just talking about from a legal standpoint.

MR. GUNN: Procedurally I don't see any basis for it, your Honor.

THE COURT: Procedurally Defendant B can move for terminating sanction when Defendant A's discovery demands were rejected, number one.

Number two, and more importantly, it is clear from the nature of the case that the discovery is common to both of them insofar as proof is concerned.

If I thought that you were prepared to handle — or your client was prepared to handle the case differently as to Ierspex, we'd have something to talk about.

But, to say to Ierspex, okay, you go ahead and serve the same interrogatories and the same demand for production, then they'll ignore you, then you'll file a motion to compel. Then I'll grant the motion to compel, and I'll make an order to compel. And then they'll ignore you. Then you'll file your 2023 motion. Then we'll deal with the terminating sanction motion. I don't need the aggravation, and the clerk doesn't need the $14 filing fees.

What else have you got?

MR. GUNN: Those are the points I wanted to raise for the Court, your Honor.

THE COURT: Okay. Anything you people want to say?

MR. ZAREFSKY: No, your Honor.

MR. BARZA: Your Honor, the only point I'd like to make beyond what your Honor has already pointed out about the futility of going through additional discovery.

The Court of Appeals has indicated that any — it is necessary that the Plaintiff obtain a judgment against Pahlavi in order to obtain a judgment against Ierspex, in a prior decision in this case.

The affect of the dismissal order is to preclude them from being able to obtain that judgment.

So that's another reason why Ierspex should be dismissed.

THE COURT: Both motions for the terminating sanction of dismissal are granted under 2023.

It is clear that the Plaintiff has abused discovery by disobeying the Court orders as to the prior discovery motions.

Counsel will prepare the orders of dismissal.

* * *

The moving parties will give notice.

MR. BARZA: Thank you, your Honor.

MR. ZAREFSKY: Your Honor, on the order, I had previously submitted a judgment. Would you like me to resubmit one which articulates reasons? I'd be happy to resubmit this one.

(Pause.)

THE COURT: So that the record is clear, Mr. Barza has appeared for Ierspex Finance, NV. Mr. Zarefsky only for Shams Pahlavi.

There is another Defendant named in the complaint. I don't know whether he or she — I don't know whether Mehrdad Pahlbod or Pahlabod, because there are two different names used, ever was served.

MR. ZAREFSKY: Your Honor, in the —

THE COURT: I know the case is over 10 years old, so effectively if he or she has not been served — Well, I don't know.

MR. ZAREFSKY: The action has been dismissed as to him.

THE COURT: As to him. Okay.

Then I'm going to sign the judgment which dismisses the entirety of the second amended complaint.

* * *

APPENDIX G

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EXCERPTS FROM DECLARATION OF THE DEMOCRATIC AND POPULAR REPUBLIC OF ALGERIA ("ALGERIAN ACCORDS")

[POINT IV - Paragraphs 12 and 14]

* * *

Point IV: Return of the Assets of the Family of the Former Shah

12. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above the United States will freeze, and prohibit any transfer of, property and assets in the United States within the control of the estate of the former Shah or of any close relative of the former Shah served as a defendant in U.S. litigation brought by Iran to recover such property and assets as belonging to Iran. As to any such defendant, including the estate of the former Shah, the freeze order will remain in effect until such litigation is finally terminated. Violation of the freeze order shall be subject to the civil and criminal penalties prescribed by U.S. law.

* * *

14. Upon the making by the Government of Algeria of the certification described in Paragraph 3 above, the United States will make known, to all appropriate U.S. courts, that in any litigation of the kind described in Paragraph 12 above the claims of Iran should not be considered legally barred either by sovereign immunity principles or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law.

* * *

APPENDIX H

BEST AVAILABLE COPY

EXECUTIVE ORDER NO. 12284

Jan. 19, 1981, 46 F.R. 7929

* * *

1-101. For the purpose of protecting the rights of litigants in courts within the United States, all property and assets located in the United States within the control of the estate of Mohammad Reza Pahlavi, the former Shah of Iran, or any close relative of the former Shah served as a defendant in litigation in such courts brought by Iran seeking the return of property alleged to belong to Iran, is hereby blocked as to each such estate or person until all such litigation against such estate or person is finally terminated.

* * *

1-104. The Attorney General of the United States having advised the President of his opinion that no claim on behalf of the Government of Iran for recovery of property of the kind described in Section 1-101 of this Order should be considered legally barred either by sovereign immunity principles or by the act of state doctrine, the Attorney General is authorized and directed to prepare, and upon the request of counsel representing the Government of Iran to present to the appropriate court or courts within the United States, suggestions of interest reflecting that such is the position of the United States, and that it is also the position of the United States that Iranian decrees and judgments relating to the assets of the former Shah and the persons described in Section 1-101 should be enforced by such courts in accordance with United States law.

* * *

APPENDIX I

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UNITED STATES CONSTITUTION
ARTICLE VI.

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a qualification to any Office or public Trust under the United States.

APPENDIX J

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CALIFORNIA CODE OF CIVIL PROCEDURE
Sections 2023, 2030, and 2031

§ 2023 Misuses of discovery process; imposition of sanctions; motion requirements

(a) Misuses of the discovery process include, but are not limited to, the following:

(1) Persisting, over objection and without substantial justification, in an attempt to obtain information or materials that are outside the scope of permissible discovery.

(2) Using a discovery method in a manner that does not comply with its specified procedures.

(3) Employing a discovery method in a manner or to an extent that causes unwarranted annoyance, embarrassment, or oppression, or undue burden and expense.

(4) Failing to respond or to submit to an authorized method of discovery.

(5) Making, without substantial justification, an unmeritorious objection to discovery.

(6) Making an evasive response to discovery.

(7) Disobeying a court order to provide discovery.

(8) Making or opposing, unsuccessfully and without substantial justification, a motion to compel or limit discovery.

(9) Failing to confer in person, by telephone, or by letter with an opposing party or attorney in a reasonable and good faith attempt to resolve informally any dispute concerning discovery, if the section governing a particular discovery motion requires the filing of a declaration stating facts showing that such an attempt has been made. Notwithstanding the outcome of the particular discovery motion, the court shall impose a monetary sanction ordering that any party or attorney who fails to confer as required pay the reasonable

expenses, including attorney's fees, incurred by anyone as a result of that conduct.

(b) To the extent authorized by the section governing any particular discovery method or any other provision of this article, the court, after notice to any affected party, person, or attorney, and after opportunity for hearing, may impose the following sanctions against anyone engaging in conduct that is a misuse of the discovery process.

(1) The court may impose a monetary sanction ordering that one engaging in the misuse of the discovery process, or any attorney advising that conduct, or both pay the reasonable expenses, including attorney's fees, incurred by anyone as a result of that conduct. The court may also impose this sanction on one unsuccessfully asserting that another has engaged in the misuse of the discovery process, or on any attorney who advised that assertion, or on both. If a monetary sanction is authorized by any provision of this article, the court shall impose that sanction unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) The court may impose an issue sanction ordering that designated facts shall be taken as established in the action in accordance with the claim of the party adversely affected by the misuse of the discovery process. The court may also impose an issue sanction by an order prohibiting any party engaging in the misuse of the discovery process from supporting or opposing designated claims or defenses.

(3) The court may impose an evidence sanction by an order prohibiting any party engaging in the misuse of the discovery process from introducing designated matters in evidence.

(4) The court may impose a terminating sanction by one of the following orders:

(A) An order striking out the pleadings or parts of the pleadings of any party engaging in the misuse of the discovery process.

(B) An order staying further proceedings by that party until an order for discovery is obeyed.

(C) An order dismissing the action, or any part of the action, of that party.

(D) An order rendering a judgment by default against that party.

(5) The court may impose a contempt sanction by an order treating the misuse of the discovery process as a contempt of court.

(c) A request for a sanction shall, in the notice of motion, identify every person, party, and attorney against whom the sanction is sought, and specify the type of sanction sought. The notice of motion shall be supported by a memorandum of points and authorities, and accompanied by a declaration setting forth facts supporting the amount of any monetary sanction sought.

History: Amended by Stats 1987 Ch 86 § 6, effective July 2, 1987, operative July 1, 1987 by Stats 1987 Ch 86 § 21.

§ 2030 Written interrogatories

Propounded to party

(a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by propounding to any other party to the action written interrogatories to be answered under oath.

Time to propound

(b) A defendant may propound interrogatories to a party to the action without leave of court at any time. A plaintiff may propound interrogatories to a party without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions five days after service of the summons on or appearance by, that party, whichever occurs first. However, on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to propound interrogatories at an earlier time.

Specially prepared and form interrogatories; declaration for additional discovery; requirements for interrogatories; supplemental interrogatories

(c) (1) A party may propound to another party (1) 35 specially prepared interrogatories, and (2) any additional number of official form interrogatories,, as described in Section 2033.5, that are relevant to the subject matter of the pending action. Except as provided in paragraph (8), no party shall, as a matter of right, propound to any other party more than 35 specially prepared interrogatories. If the initial set of interrogatories does not exhaust this limit, the balance may be propounded in subsequent sets. Unless a declaration as described in paragraph (3) has been made, a party need only respond to the first 35 specially prepared interrogatories served, if that party states an objection to the balance, under paragraph (3) of subdivision (f) on the ground that the limit has been exceeded.

(2) Subject to the right of the responding party to seek a protective order under subdivision (e), any party who attaches a supporting declaration as described in paragraph (3) may propound a greater number of specially prepared interrogatories to another party if this greater number is warranted because of any of the following:

(A) The complexity or the quantity of the existing and potential issue in the particular case.

(B) The financial burden on a party entailed in conducting the discovery by oral deposition.

(C) The expedience of using this method of discovery to provide to the responding party the opportunity to conduct an inquiry, investigation, or search of files or records to supply the information sought.

If the responding party seeks a protective order on the ground that the number of specially prepared interrogatories is unwarranted, the propounding party shall have the burden of justifying the number of these interrogatories.

(3) Any party who is propounding or has propounded more than 35 specially prepared interrogatories to any other party shall attach to each set of those interrogatories a declaration containing substantially the following:

DECLARATION FOR ADDITIONAL DISCOVERY

I, _____, declare:

1. I am (a party to this action or proceeding appearing in propria persona) (presently the attorney for _____, a party to this action or proceeding).

2. I am propounding to _____ the attached set of interrogatories.

3. This set of interrogatories will cause the total number of specially prepared interrogatories propounded to the party to whom they are directed to exceed the number of specially

prepared interrogatories permitted by paragraph (1) of subdivision (c) of Section 2030 of the Code of Civil Procedure.

4. I have previously propounded a total of _____ interrogatories to this party, of which _____ interrogatories were not official form interrogatories.

5. This set of interrogatories contains a total of specially prepared interrogatories.

6. I am familiar with the issues and the previous discovery conducted by all of the parties in the case.

7. I have personally examined each of the questions in this set of interrogatories.

8. This number of questions is warranted under paragraph (2) of subdivision (c) of Section 2030 of the Code of Civil Procedure because _____. (Here state each factor described in paragraph (2) of subdivision (c) that is relied on, as well as the reasons why any factor relied on is applicable to the instant lawsuit.)

9. None of the questions in this set of interrogatories is being propounded for any improper purpose, such as to harass the party, or the attorney for the party, to whom it is directed, or to cause unnecessary delay or needless increase in the cost of litigation.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, and that this declaration was executed on _____.

_____
(Signature)
Attorney for _____

(4) A party propounding interrogatories shall number each set of interrogatories consecutively. In the first paragraph immediately below the title of the case, there shall appear the identity of the propounding party, the set number, and the identity of the responding party. Each interrogatory

in a set shall be separately set forth and identified by number or letter.

(5) Each interrogatory shall be full and complete in and of itself. No preface or instruction shall be included with a set of interrogatories unless it has been approved under Section 2033.5. Any term specially defined in a set of interrogatories shall be typed with all letters capitalized wherever that term appears. No specially prepared interrogatory shall contain subparts, or a compound, conjunctive, or disjunctive question.

(6) An interrogatory may relate to whether another party is making a certain contention, or to the facts, witnesses, and writings on which a contention is based. An interrogatory is not objectionable because an answer to it involves an opinion or contention that relates to fact or the application of law to fact, or would be based on information obtained or legal theories developed in anticipation of litigation or in preparation for trial.

(7) An interrogatory may not be made a continuing one so as to impose on the party responding to it a duty to supplement an answer to it that was initially correct and complete with later acquired information.

(8) In addition to the number of interrogatories permitted by paragraphs (1) and (2), a party may propound a supplemental interrogatory to elicit any later acquired information bearing on all answers previously made by any party in response to interrogatories (1) twice prior to the initial setting of a trial date, and (2) subject to the time limits on discovery proceedings and motions provided in Section 2024, once after the initial setting of a trial date. However, on motion, for good cause shown, the court may grant leave to a party to propound an additional number of supplemental interrogatories.

Service on parties

(d) The party propounding interrogatories shall serve a copy of them (1) on the party to whom they are directed, and (2) on all other parties who have appeared in the action, unless the court on motion with or without notice has relieved that party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

Protective order

(e) When interrogatories have been propounded, the responding party, and any other party or affected natural person or organization may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the set of interrogatories, or particular interrogatories in the set, need not be answered.

(2) That, contrary to the representations made in a declaration submitted under paragraph (3) of subdivision (c), the number of specially prepared interrogatories is unwarranted.

(3) That the time specified in subdivision (h) to respond to the set of interrogatories, or to particular interrogatories in the set, be extended.

(4) That the response be made only on specified terms and conditions.

(5) That the method of discovery be an oral deposition instead of interrogatories to a party.

(6) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a certain way.

(7) That some or all of the answers to interrogatories be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the party provide or permit the discovery against which protection was sought on terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances made the imposition of the sanction unjust.

Response to interrogatories

(f) The party to whom interrogatories have been propounded shall respond in writing under oath separately to each interrogatory by (1) an answer containing the information sought to be discovered, (2) an exercise of the party's option to produce writings, or (3) an objection to the particular interrogatory. In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the propounding party. Each answer, exercise of option, or objection in the response shall bear the same identifying number or letter and be in the same sequence as the corresponding interrogatory, but the text of that interrogatory need not be repeated.

(1) Each answer in the response shall be as complete and straightforward as the information reasonably available to the responding party permits. If an interrogatory cannot be answered completely, it shall be answered to the extent possible. If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory,

that party shall so state, but shall make a reasonable and good faith effort to obtain the information by inquiry to other natural persons or organizations, except where the information is equally available to the propounding party.

(2) If the answer to an interrogatory would necessitate the preparation or the making of a compilation, abstract, audit, or summary of or from the documents of the party to whom the interrogatory is directed, and if the burden or expense of preparing or making it would be substantially the same for the party propounding the interrogatory as for the responding party, it is a sufficient answer to that interrogatory to refer to this subdivision and to specify the writings from which the answer may be derived or ascertained. This specification shall be in sufficient detail to permit the propounding party to locate and to identify, as readily as the responding party can, the documents from which the answer may be ascertained. The responding party shall then afford to the propounding party a reasonable opportunity to examine, audit, or inspect these documents and to make copies, compilations, abstracts or summaries of them.

(3) If only a part of an interrogatory is objectionable, the remainder of the interrogatory shall be answered. If an objection is made to an interrogatory or to a part of an interrogatory, the specific ground for the objection shall be set forth clearly in the response. If an objection is based on a claim of privilege, the particular privilege invoked shall be clearly stated. If an objection is based on a claim that the information sought is protected work product under Section 2018, that claim shall be expressly asserted.

Signing of response

(g) The party to whom the interrogatories are directed shall sign the response under oath unless the response contains only objections. If that party is a public or private corporation, or a partnership, association, or governmental agency, one of its officers or agents shall sign the response

under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for the party, that party waives any lawyer-client privilege and any protection for work product under Section 2018 during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response. The attorney for the responding party shall sign any responses that contain an objection.

Service of response

(h) Within 30 days after service of interrogatories, or in unlawful detainer actions within five days after service of interrogatories the party to whom the interrogatories are propounded shall serve the original of the response to them on the propounding party, unless on motion of the propounding party the court has shortened the time for response, or unless on motion of the responding party the court has extended the time for response. In unlawful detainer actions, the party to whom the interrogatories are propounded shall have five days from the date of service to respond unless on motion of the propounding party the court has shortened the time for response. The party to whom the interrogatories are propounded shall also serve a copy of the response on all other parties who have appeared in the action, unless the court on motion with or without notice has relieved that party from this requirement on its determination that service on all other parties would be unduly expensive or burdensome.

Agreement to extend time for service of response

(i) The party propounding interrogatories and the responding party may agree to extend the time for service of a response to a set of interrogatories, or to particular interrogatories in a set, to a date beyond that provided in subdivision (h). This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for service of a response. Unless this agreement expressly states

otherwise, it is effective to preserve to the responding party the right to respond to any interrogatory to which the agreement applies in any manner specified in subdivision (f).

Custody of interrogatories and response

(j) The interrogatories and the response thereto shall not be filed with the court. The propounding party shall retain both the original of the interrogatories, with the original proof of service affixed to them, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court on motion of any party and for good cause shown orders that the originals be preserved for a longer period.

Failure to serve timely response; motion for order compelling response

(k) If a party to whom interrogatories have been directed fails to serve a timely response, that party waives any right to exercise the option to produce writings under subdivision (f), as well as any objection to the interrogatories, including one based on privilege or on the protection for work product under Section 2018. However, the court, on motion, may relieve that party from this waiver on its determination that (1) the party has subsequently served a response that is in substantial compliance with subdivision (f), and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The party propounding the interrogatories may move for an order compelling response to the interrogatories. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey an order compelling answers, the court may make those orders that are just, including the imposition

of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

Motion for order compelling further response

(l) If the propounding party, on receipt of a response to interrogatories, deems that (1) an answer to a particular interrogatory is evasive or incomplete, (2) an exercise of the option to produce documents under paragraph (2) of subdivision (f) is unwarranted or the required specification of those documents is inadequate, or (3) an objection to an interrogatory is without merit or too general, that party may move for an order compelling a further response. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or on or before any specific later date to which the propounding party and the responding party have agreed in writing, the propounding party waives any right to compel a further response to the interrogatories.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a further response to interrogatories, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling further response to interrogatories, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

Service of amended answer

(m) Without leave of court, a party may serve an amended answer to any interrogatory that contains information subsequently discovered, inadvertently omitted, or mistakenly stated in the initial interrogatory. At the trial of the action, the propounding party or any other party may use the initial answer under subdivision (n), and the responding party may then use the amended answer.

The party who propounded an interrogatory to which an amended answer has been served may move for an order that the initial answer to that interrogatory be deemed binding on the responding party for the purpose of the pending action. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court shall grant this motion if it determines that (1) the initial failure of the responding party to answer the interrogatory correctly has substantially prejudiced the party who propounded the interrogatory, (2) the responding party has failed to show substantial justification for the initial answer to that interrogatory, and (3) the prejudice to the propounding party cannot be cured either by a continuance to permit further discovery or by the use of the initial answer under subdivision (n).

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to deem binding an initial answer to an interrogatory, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Use of answer at trial for other hearing

(n) At the trial or any other hearing in the action, so far as admissible under the rules of evidence, the propounding party or any party other than the responding party may use

any answer or part of an answer to an interrogatory only against the responding party. It is not ground for objection to the use of an answer to an interrogatory that the responding party is available to testify, has testified, or will testify at the trial or other hearing.

History: Amended by Stats 1991 Ch 1090 § 11.

§ 2031 Inspection of documents, tangible things, and land or other property

Inspecting documents, tangible things, and land or other property in possession, custody, or control of party

(a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by inspecting documents, tangible things, and land or other property that are in the possession, custody, or control of any other party to the action.

(1) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to copy a document that is in the possession, custody, or control of the party on whom the demand is made.

(2) A party may demand that any other party produce and permit the party making the demand, or someone acting on that party's behalf, to inspect and to photograph, test, or sample any tangible things that are in the possession, custody, or control of the party on whom the demand is made.

(3) A party may demand that any other party allow the party making the demand, or someone acting on that party's behalf, to enter on any land or other property that is in the possession, custody, or control of the party on whom the demand is made, and to inspect and to measure, survey, photograph, test, or sample the land or other property, or any designated object or operation on it.

Time of demand

(b) A defendant may make a demand for inspection without leave of court at any time. A plaintiff may make a demand for inspection without leave of court at any time that is 10 days after the service of the summons on, or in unlawful detainer actions within five days after service of the summons on or appearance by, the party to whom the demand is directed, whichever occurs first. However, on motion with or without notice, the court, for good cause shown, may grant leave to a plaintiff to make an inspection demand at an earlier time.

Contents of demand

(c) A party demanding an inspection shall number each set of demands consecutively. In the first paragraph immediately below the title of the case, there shall appear the identity of the demanding party, the set number, and the identity of the responding party. Each demand in a set shall be separately set forth, identified by number or letter, and shall do all of the following:

(1) Designate the documents, tangible things, or land or other property to be inspected either by specifically describing each individual item or by reasonably particularizing each category of item.

(2) Specify a reasonable time for the inspection that is at least 30 days after service of the demand, or in unlawful detainer actions at least five days after service of the demand, unless the court for good cause shown has granted leave to specify an earlier date.

(3) Specify a reasonable place for making the inspection, copying, and performing any related activity.

(4) Specify any related activity that is being demanded in addition to an inspection and copying, as well as the manner in which that related activity will be performed, and whether that activity will permanently alter or destroy the item involved.

Service of demand

(d) The party demanding an inspection shall serve a copy of the inspection demand on the party to whom it is directed and on all other parties who have appeared in the action.

Protective order

(e) When an inspection of documents, tangible things or places has been demanded, the party to whom the demand has been directed, and any other party or affected person or organization, may promptly move for a protective order. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. The protective order may included but is not limited to, one or more of the following directions:

(1) That all or some of the items or categories of items in the inspection demand need not be produced or made available at all.

(2) That the time specified in subdivision (h) to respond to the set of inspection demands, or to a particular item or category in the set, be extended.

(3) That the place of production be other than that specified in the inspection demand.

(4) That the inspection be made only on specified terms and conditions.

(5) That a trade secret or other confidential research, development, or commercial information not be disclosed, or be disclosed only to specified persons or only in a specified way.

(6) That the items produced be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the party to whom the demand was directed provide or permit the discovery against which protection was sought on terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

Response

(f) The party to whom an inspection demand has been directed shall respond separately to each item or category of item by a statement that the party will comply with the particular demand for inspection and any related activities, a representation that the party lacks the ability to comply with the demand for inspection of a particular item or category of item, or an objection to the particular demand.

In the first paragraph of the response immediately below the title of the case, there shall appear the identity of the responding party, the set number, and the identity of the demanding party. Each statement of compliance, each representation, and each objection in the response shall bear the same number and be in the same sequence as the corresponding item or category in the demand, but the text of that item or category need not be repeated.

(1) A statement that the party to whom an inspection demand has been directed will comply with the particular demand shall state that the production, inspection, and related activity demanded will be allowed either in whole or in part, and that all documents or things in the demanded category that are in the possession, custody, or control of that party and to which no objection is being made will be included in the production.

Any documents demanded shall either be produced as they are kept in the usual course of business, or be organized and labeled to correspond with the categories in the demand. If necessary, the responding party at the reasonable expense of the demanding party shall, through detection devices, translate any data compilations included in the demand into reasonably usable form.

(2) A representation of inability to comply with the particular demand for inspection shall affirm that a diligent search and a reasonable inquiry has been made in an effort to comply with that demand. This statement shall also specify whether the inability to comply is because the particular item or category has never existed has been destroyed, has been lost, misplaced, or stolen, or has never been, or is no longer, in the possession, custody, or control of the responding party. The statement shall set forth the name and address of any natural person or organization known or believed by that party to have possession, custody, or control of that item or category of item.

(3) If only part of an item or category of item in an inspection demand is objectionable, the response shall contain a statement of compliance, or a representation of inability to comply with respect to the remainder of that item or category. If the responding party objects to the demand for inspection of an item or category of item, the response shall (A) identify with particularity any document, tangible thing, or land falling within any category of item in the demand to which an objection is being made, and (B) set forth clearly the extent of, and the specific ground for, the objection. If an objection is based on a claim of privilege, the particular privilege invoked shall be stated. If an objection is based on a claim that the information sought is protected work product under Section 2018, that claim shall be expressly asserted.

Signing of response

(g) The party to whom the demand for inspection is directed shall sign the response under oath unless the response contains only objections. If that party is a public or private corporation or a partnership or association or governmental agency, one of its officers or agents shall sign the response under oath on behalf of that party. If the officer or agent signing the response on behalf of that party is an attorney acting in that capacity for a party, that party waives any lawyer-client privilege and any protection for work product under Section 2018 during any subsequent discovery from that attorney concerning the identity of the sources of the information contained in the response. The attorney for the responding party shall sign any responses that contain an objection.

Time for service of response

(h) Within 20 days after service of an inspection demand, or in unlawful detainer actions within five days of an inspection demand, the party to whom the demand is directed shall serve the original of the response to it on the party making the demand, and a copy of the response on all other parties who have appeared in the action, unless on motion of the party making the demand the court has shortened the time for response, or unless on motion of the party to whom the demand has been directed, the court has extended the time for response. In unlawful detainer actions, the party to whom the demand is directed shall have an least five days from the date of service of the demand to respond unless on motion of the party making the demand the court has shortened the time for the response.

Agreement to extend time for service of response

(i) The party demanding an inspection and the responding party may agree to extend the time for service of a response to a set of inspection demands, or to particular items or categories of items in a set, to a date beyond that provided in

subdivision (h). This agreement may be informal, but it shall be confirmed in a writing that specifies the extended date for service of a response. Unless this agreement expressly states otherwise, it is effective to preserve to the responding party the right to respond to any item or category of item in the demand to which the agreement applies in any manner specified in subdivision (f).

Custody of demand and response

(j) The inspection demand and the response to it shall not be filed with the court. The party demanding an inspection shall retain both the original of the inspection demand, with the original proof of service affixed to it, and the original of the sworn response until six months after final disposition of the action. At that time, both originals may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the originals be preserved for a longer period.

Failure to serve timely response; motion to compel response

(k) If a party to whom an inspection demand has been directed fails to serve a timely response to it, that party waives any objection to the demand, including one based on privilege or on the protection for work product under Section 2018. However, the court, on motion, may relieve that party from this waiver on its determination that (1) the party has subsequently served a response that is in substantial compliance with subdivision (f), and (2) the party's failure to serve a timely response was the result of mistake, inadvertence, or excusable neglect.

The party making the demand may move for an order compelling response to the inspection demand. The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel a response to an inspection demand, unless it finds that the one subject to the sanction

acted with substantial justification or that other circumstances make the imposition of the sanction unjust. If a party then fails to obey the order compelling a response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence, sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

Motion to compel further response

(l) If the party demanding an inspection, on receipt of a response to an inspection demand, deems that (1) a statement of compliance with the demand is incomplete, (2) a representation of inability to comply is inadequate, incomplete, or evasive, or (3) an objection in the response is without merit or too general, that party may move for an order compelling further response to the demand. This motion (1) shall set forth specific facts showing good cause justifying the discovery sought by the inspection demand, and (2) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by it.

Unless notice of this motion is given within 45 days of the service of the response, or any supplemental response, or on or before any specific later date to which the demanding party and the responding party have agreed in writing, the demanding party waives any right to compel a further response to the inspection demand.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel further response to an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party fails to obey an order compelling further response, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

Motion to compel compliance

(m) If a party filing a response to a demand for inspection under subdivision (f) thereafter fails to permit the inspection in accordance with that party's statement of compliance, the party demanding the inspection may move for an order compelling compliance.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel compliance with an inspection demand, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a party then fails to obey an order compelling inspection, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to that sanction, the court may impose a monetary sanction under Section 2023.

History: Amended by Stats 1991 Ch. 1090 § 12.

APPENDIX K

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EXCERPTS FROM CASE NO. WEC 069489

OPPOSITION TO DEFENDANT SHAMS PAHLAVI'S MOTION FOR ORDER COMPELLING FURTHER RESPONSES TO INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS, AND AWARDING MONETARY SANCTIONS OR, IN THE ALTERNATIVE, FOR AN ORDER PROHIBITING PLAINTIFF FROM INTRODUCING DESIGNATED MATTERS INTO EVIDENCE; EXHIBITS "A", "B" AND "C"

[Filed May 22, 1992, in the Los Angeles Superior Court, West District - Pages 6 through 14.]

* * *

I. THE DECREE CONSTITUTES AN ACT OF STATE WHICH IS NOT SUBJECT TO CHALLENGE BY PAHLAVI'S DISCOVERY REQUESTS.

It is hornbook law that "[E]very sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory.["] *Underhill v. Hernandez*, 168 U.S. 250 (1897), 18 S. Ct. 84.

The underlying Decree was issued by the Government of IRAN. Based on the act of state doctrine, United States Courts cannot adjudicate the validity of the Decree; nor can discovery processes allowed under California's Civil Discovery Act be used to circumvent that limitation.

The Decree seeks return of the wealth of the people of IRAN which Defendants, including PAHLAVI, embezzled and misappropriated. Contrary to PAHLAVI's mischarac-

terization of the Decree, it is not a confiscatory decree. As PAHLAVI's recognizes at Page 8, Lines 15-24 of her Memorandum of Points and Authorities in support of the subject Motion to Compel, the United States Government filed a Suggestion of Interest stating the Government's position with regard to IRAN's Decree. In the Suggestion of Interest, which was filed with this court in and about the first week of October, 1991, the United States Government stated the Decree "can be interpreted as a demand for return of property . . ." The United States Government also stated that the Decree is not confiscatory and should be enforced. The United States Government represented to the Court that IRAN's efforts to enforce the Decree should not be hindered by the Court requiring that IRAN post an undertaking for PAHLAVI's costs.

In *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 411 (1963), the Court recognized the United States Government gave support to Cuba's act of state claim by letters from the Department of State. Here, the United States Government supports IRAN's action on the Decree. The Government filed a Suggestion of Interest characterizing the Decree as non-confiscatory and this Court should give the Government's Suggestion of Interest great deference.

A. If This Court Characterizes The Decree As Confiscatory and Involving Acts In The United States, The Decree Is Still Consistent With United States Policy And Laws. The Extra Territorial Exception To The Act Of State Doctrine Does Not Apply.

The Algerian Accords dictate at Point IV, Paragraph 14 "that in any litigation of the kind described in Paragraph 12 above [claims to the estate of the former Shah or of any close relative of the former Shah served as a Defendant in U.S.

litigation brought by Iran to recover such property and assets belonging to Iran] the claims of Iran should not be considered legally barred either by sovereign immunity principals or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law."

The Algerian Accords were approved and adopted on behalf of the United States by then Deputy Secretary of State Warren M. Christopher based on the authority of then President Jimmy Carter. President Ronald Reagan later recognized the validity of President Carter's authorization of the Algerian Accords and the binding effects of the Algerian Accords on the Reagan Administration and the United States. Since the Algerian Accords were approved and adopted by the United States by authority of Executive Order and their adoption was ratified by Executive Order, the Algerian Accords constitute an Executive agreement. As such, the Algerian Accords set forth the United States policy and law with regard to the United State's obligations to enforce the Decree pursuant to the Algerian Accords.

The "extra territorial exception" to the act of state doctrine holds that when inconsistent with the polices [sic] and law of the United States, our courts will not give extra territorial effect to a confiscatory decree of a foreign state, even where directed against its own nationals. *Maltina Corp. v. Cawy Bottling Co.*, 462 F.2d 1021, 1025 (5th Cir. 1972) *cert. denied*, 409 U.S. 1060, 93 S. Ct. 555. In *Republic of Iraq v. First National City Bank*, the Court stated a similar position regarding the act of state doctrine. There, the Court stated "when property confiscated is within the United States at the time of the attempted confiscation, our courts will give effect to acts of state only if they are consistent with the policy and law of the United Sates." 353 F.2d 47, 51 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027, 86 S. Ct. 648. The Court in *Republic of Iraq* ultimately refused to enforce a foreign decree effecting property in the United States on the grounds

that the Iraqi act of state was contrary to United States policy and law.

The United States Government attested in this case in its Suggestion of Interest at Page 5, footnote 6, *Republic of Iraq* is distinguishable from this case. In *Republic of Iraq*, the Court distinguished cases in which the Executive Branch of the U.S. Government has entered into an international agreement concerning the enforcement of foreign decrees or where the Department of State has taken a position as to enforcement. 353 F.2d at 52. Here, unlike in *Republic of Iraq*, an Executive Agreement which calls for enforcement of the Decree is in place. Further, the Department of State, by approving adoption of the Algerian Accords, has stated the position that decrees by IRAN should be enforced by U.S. Courts. For the above stated reasons, the Decree which IRAN seeks to enforce in this case is consistent with the policies and laws of the United States.

II. IRAN'S OBJECTION TO PAHLAVI'S DISCOVERY REQUESTS ARE WELL SUPPORTED.

IRAN objects to each of PAHLAVI's discovery requests based on the Algerian Accords. Since the underlying decree constitutes an act of state, the validity of which United States Courts may not adjudicate, PAHLAVI's discovery requests are irrelevant to enforcement of the Decree.

In addition to objecting to Interrogatories Nos. 2, 3, and 4 based on the Algerian Accords, IRAN stated form objections including that the Interrogatories were unintelligible, burdensome, and oppressive. IRAN also objected that the Interrogatories seek information equally available to PAHLAVI from other sources, including herself; and, that the Interrogatories seek information which is irrelevant and immaterial. Said Interrogatories seek the identity of each item of property taken by PAHLAVI, the date on which it was taken, and the circumstances under which it was taken.

For the above stated reasons, the requested information violates the Algerian Accords. Further, the requested information is peculiarly within PAHLAVI's purview of information based on the nature of the allegations in IRAN's Amended Complaint. IRAN intends to pursue discovery from PAHLAVI on the issues raised by these Interrogatories.

Interrogatory Nos. 14 and 15 and Request for Production of Documents No. 44 seeks information regarding enforcement of the Decree against any of PAHLAVI's assets in Iran. IRAN objects based on the Algerian Accords and states form objections that the discovery requests are vague, ambiguous, unintelligible, overbroad, burdensome, and oppressive and the further objection that they seek information which is irrelevant and immaterial. Based on the act of state doctrine, actions by the Government of IRAN in Iran are not subject to scrutiny by United States Courts. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428, 84 S. Ct. at 940.

Based on the Algerian Accords, IRAN objected to Interrogatory Nos. 17, 18, 19, and 20 and stated form objections that the requests are vague, ambiguous, unintelligible, overbroad, burdensome, and oppressive, that they are remote and indefinite as to time and seek information equally available to PAHLAVI from other sources, including herself; and, IRAN objects on the grounds that the discovery requests are irrelevant and immaterial and the Amended Complaint speaks for itself. Interrogatory Nos. 17, 18, and 19 ask if IRAN contends that PAHLAVI departed IRAN with property not lawfully hers. Interrogatory No. 20 asks for all supporting facts, and inquires if IRAN contends the Decree was issued by the Government of IRAN. Each of these discovery requests is answered by the allegations in IRAN's Amended Complaint.

IRAN objects to Requests for Production of Documents Nos. 34, 39, 40, 41, 42, 43, and 45 based solely on the Algerian Accords. Request for Production of Document Nos. 34 and 39 request all documents which show PAHLAVI

embezzled the wealth of the people of IRAN and which identify the properties which she embezzled. The requested information is uniquely within the purview of PAHLAVI. IRAN intends to initiate discovery to PAHLAVI on theses issues. The requested information violates the Algerian Accords and IRAN is not obligated to produce it based on the act of state doctrine. The same objections and arguments pertain to the following: Request for Production No. 40 which request documents that show Ruhollah Mossavi Khomeini was the duly appointed head of State of IRAN on February 28, 1979; No. 41 which requests information regarding the procedures IRAN followed in issuing the Decree; No. 42 which seeks documents IRAN relied on in issuing the Decree; No. 43 which seeks the documents which show procedures IRAN followed in promulgating the Decree; and No. 45, which request all documents that show all of PAHLAVI's assets were unlawfully embezzled from IRAN.

All of the information requested regarding the assets embezzled by PAHLAVI is information uniquely within PAHLAVI's purview. The information requested regarding the procedures followed by IRAN is protected by the act of state doctrine and based on the Algerian Accords is not relevant to enforcement of the Decree.

IRAN objected to Requested for Production of Documents No. 35 based on the Algerian Accords. IRAN stated form objections that the request was overbroad, burdensome, and oppressive and further objected that the request is drafted in boilerplate form requiring reference to pleadings. IRAN also objected that the request seeks material equally available to PAHLAVI from other sources, including herself. The request fails to define terms and describe requested materials with reasonable particularity. The request seeks "All documents which support the allegations of paragraph 5 of the Second Amended Complaint." The request is technically deficient for failing to define applicable terms and specify the requested materials with reasonable particularity.

Additionally, the request is burdensome and oppressive since it does require reference to pleadings to even attempt to determine PAHLAVI's meaning and the information requested by PAHLAVI. Further, the requested information is uniquely within PAHLAVI's purview. IRAN intends to initiate discovery to PAHLAVI on these issues.

Request for Production No. 36 requests all documents which show PAHLAVI was a member of a network of relatives and associates of the Shah which was formed to embezzle the wealth of IRAN. IRAN objected to this request based on the Algerian Accords and on the grounds the request seeks materials equally available to PAHLAVI from other sources, including herself. As with the other discovery requests, the requested information is uniquely within PAHLAVI's purview given the nature of the allegations in the Amended Complaint and the manner in which PAHLAVI embezzled the wealth of the people of IRAN. IRAN intends to initiate discovery to PAHLAVI on this issue.

Request for Production No. 37 requests documents which show PAHLAVI held a position of power and influence in the former Government of IRAN. IRAN objected based on the Algerian Accords and on the further grounds that the request is oppressive. PAHLAVI held a position with the Government of IRAN for many years and a request for all documents is burdensome and oppressive. Further the request seeks information equally available TO PAHLAVI from other sources, including herself.

Request for Production No. 38 seeks all documents which show PAHLAVI exploited a position of power in the former Government of IRAN for the purpose of embezzling. IRAN objected based on the Algerian Accords and on the further grounds that the request seeks information equally available to PAHLAVI from other sources, including herself. This request seeks information uniquely within PAHLAVI's purview. IRAN intends to initiate discovery to PAHLAVI on these issues.

Request for Production No. 44 seeks all documents which identify PAHLAVI's assets allegedly confiscated by IRAN. IRAN objected to the request based on the Algerian Accords and on the further ground that the information requested is not relevant or material to this action. Since this action is to enforce the Decree based on the Algerian Accords, any inquiries into actions by the Government of IRAN is precluded by the act of state doctrine. *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 428, 84 S. Ct. at 940. The requested information is wholly irrelevant and immaterial.

* * *

APPENDIX L

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EXCERPTS FROM CASE NO. WEC 069489

OPPOSITION TO MOTION TO DISMISS FOR FAILURE TO COMPLY WITH COURT ORDER COMPELLING RESPONSES TO DOCUMENT PRODUCTION REQUESTS

[Filed Sept. 10, 1992, in the Los Angeles Superior Court, West District - Pages 3 through 8.]

* * *

I.

THIS COURT HAS THE DISCRETION TO ALLOW THE CASE TO PROCEED TO TRIAL DESPITE IRAN'S FAILURE TO COMPLY WITH ITS ORDER OF JUNE 2, 1992.

* * *

IRAN interprets the Algerian Accords to obligate United States Courts to enforce the Decree of February 28, 1979. Throughout the negotiations pertaining to the Algerian Accords, IRAN was assured that the claims of IRAN and its nationals seeking return of the property of the people of IRAN would be allowed to proceed in the United States Courts. Further IRAN was assured that Iranian decrees and judgments seeking the return of the property of the people of IRAN from the former Shah and his relatives, including PAHLAVI would be enforced in United States Courts. (Gunn Declaration, September 10, 1992, Exhibit "A", Point IV, Paras. 12, 14.)

II.

THE DECREE CONSTITUTES AN ACT OF STATE WHICH IS NOT SUBJECT TO CHALLENGE BY PAHLAVI'S DISCOVERY REQUESTS.

"[E]very sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory." *Underhill v. Hernandez*, 168 U.S. 250 (1897), 18 S. Ct. 84. The underlying Decree was issued by the Government of IRAN. Based on the act of state doctrine, United States Courts cannot adjudicate the validity of the Decree; nor can discovery processes allowed under California's Civil Discovery Act be used to circumvent that limitation.

The Decree seeks return of the wealth of the people of IRAN which Defendants, including PAHLAVI, embezzled and misappropriated. Contrary to PHALAVI's mischaracterization of the Decree, it is not a confiscatory decree. On October 8, 1992 the United States Government filed a Suggestion of Interest stating the Government's position with regard to IRAN's Decree. In the Suggestion of Interest, the United States Government stated the Decree "can be interpreted as a demand for return of property. . ." The United States Government also stated that the Decree is not confiscatory and should be enforced. The United States Government represented to the Court that IRAN's efforts to enforce the Decree should not be hindered by the Court. A true and correct copy of the Suggestion of Interest is attached as Exhibit "B" to the Declaration of IRAN's counsel, Patrick A. Gunn, dated September 10, 1992, which was filed concurrently herewith.

In *Banco Nacional De Cuba v. Sabbatino*, 376 U.S. 398, 411 (1963), the Court recognized the United States Government gave support to Cuba's act of state claim by letters from the Department of State. Here, the United States Government supports IRAN's action on the Decree.

III.

IF THIS COURT CHARACTERIZES THE DECREE AS CONFISCATORY AND INVOLVING ACTS IN THE UNITED STATES, THE DECREE IS STILL CONSISTENT WITH UNITED STATES POLICY AND LAWS. THE EXTRA TERRITORIAL EXCEPTION TO THE ACT OF STATE DOCTRINE DOES NOT APPLY.

The Algerian Accords dictate at Point IV, Paragraph 14 "that in any litigation of the kind described in Paragraph 12 above [claims to the estate of the former Shah or of any close relative of the former Shah served as a Defendant in U.S. litigation brought by Iran to recover such property and assets belonging to Iran] the claims of Iran should not be considered legally barred either by sovereign immunity principals or by the act of state doctrine and that Iranian decrees and judgments relating to such assets should be enforced by such courts in accordance with United States law."

The Algerian Accords were approved and adopted on behalf of the United States by then Deputy Secretary of State Warren M. Christopher based on the authority of then President Jimmy Carter. President Ronald Reagan later recognized the validity of President Carter's authorization of the adoption of the Algerian Accords and the binding effects of the Algerian Accords on the Reagan Administration and the United States. Since the Algerian Accords were approved and adopted by the United States by authority of

Executive Order and their adoption was ratified by Executive Order, the Algerian Accords constitute an Executive Agreement. As such, the Algerian Accords set forth the United States policy and law with regard to the United State's obligations to enforce the Decree pursuant to the Algerian Accords.

The "extra territorial exception" to the act of state doctrine holds that when inconsistent with the polices [sic] and law of the United States, our courts will not give extra territorial effect to a confiscatory decree of a foreign state, even where directed against its own nationals. *Maltina Corp v. Cawy Bottling Co.*, 462 F.2d 1021, 1025 (5th Cir. 1972) *cert. denied*, 409 U.S. 1060, 93 S. Ct. 555. In *Republic of Iraq v. First National City Bank*, the Court stated a similar position regarding the act of state doctrine. There, the Court stated "when property confiscated is within the United States at the time of the attempted confiscation, our courts will give effect to acts of state only if they are consistent with the policy and law of the United States." 353 F.2d 47, 51 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027, 86 S. Ct. 648. The Court in *Republic of Iraq* ultimately refused to enforce a foreign decree effecting property in the United States on the grounds that the Iraqi act of state was contrary to United States policy and law.

The United States Government attested in this case in its Suggestion of Interest at Page 5, footnote 6, *Republic of Iraq* is distinguishable from this case. Gunn Declaration, September 10, 1992, Exhibit "B". In *Republic of Iraq*, the Court distinguished cases in which the Executive Branch of the U.S. Government has entered into an international agreement concerning the enforcement of foreign decrees or where the Department of State has taken a position as to enforcement. 353 F.2d at 52. Here, unlike in *Republic of Iraq*, an Executive Agreement which calls for enforcement of the Decree is in place. Further, the Department of State, by approving adoption of the Algerian Accords, has stated the position that

decrees by IRAN should be enforced by U.S. Courts. For the above stated reasons, the Decree which IRAN seeks to enforce in this case is consistent with the polices and laws of the United States.

* * *

APPENDIX M

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EXCERPTS FROM APPELLANT'S OPENING BRIEF

[Filed in the California Court of Appeal, Second Appellate District, Division One, No. B072484 - Pages 12 through 22]

* * *

I.

THE ALGERIAN ACCORDS CONSTITUTE SUPREME FEDERAL LAW WHICH SUPERSEDES STATE LAW DISCOVERY REQUIREMENTS AND REQUIRES THE DECREE'S IMMEDIATE ENFORCEMENT

SHAMS, IERSPEX and the trial court contend that IRAN must comply with discovery in order to enforce THE DECREE under the Algerian Accords. IRAN denies this. To determine IRAN's discovery obligations in this case the court must interpret the clear terms of the Algerian Accords. Interpretation of an agreement is a question of law which an appellate court reviews *de novo.* [Footnore omitted.] *See Parsons v. Bristol Development Co.*, 62 Cal. 2d 861, 865-866, 44 Cal. Rptr. 767, 402 P.2d 839 (1965). Therefore, *de novo* review applies to interpretation of the Algerian Accords.

President Jimmy Carter authorized and adopted the Algerian Accords. The Algerian Accords specifically provide in Paragraph 14 for enforcement of Iranian Decrees. The same paragraph states that United States Courts should enforce such decrees "in accordance with United States law." (C.T. 97.)

The Algerian Accords are an international agreement entered into by the executive branch of the United States Government. Treaties and international agreements are United States law. U.S. Const. Art. VI.

United States courts must recognize the supremacy of United States law and policy created by an executive agreement. The United States Supreme Court interpreted an executive agreement, the Litvinov Agreement, under Article VI of the United States Constitution in the same fashion requested by IRAN in *United States v. Pink*, 315 U.S. 203 (1942) and *United States v. Belmont*, 301 U.S. 324 (1937). The Litvinov Agreement established diplomatic relations between the United States and the Soviet Union as well as an assignment to the United States of claims which the Soviet Union expropriated. The expropriated properties included corporations and bank deposits of pre-revolutionary Russian origin located *within* the United States.

In *United States v. Pink, supra*, the United States Government brought suit to recover a business of Russian origin, located in New York State, which denied that the Soviet expropriation affected it. The business challenged the expropriation in New York State Court and eventually in the United States Supreme Court on state law and constitutional grounds. Before reaching the United States Supreme Court, the United States' complaint was dismissed for failure to state a cause of action. *See United States v. Pink*, 32 N.E.2d (N.Y. 1940) *rev'd, United States v. Pink*, 315 U.S. 203 (1942).

In *United States v. Belmont, supra*, the United States government sued to recover a private Russian corporation's bank deposits in the United States under the same Soviet expropriation. Before reaching the United States Supreme Court, the United States' complaint was dismissed for failure to state a cause of action. *See United States v. Belmont*, 85 F.2d 542 (2d Cir. 1936), *rev'd, United States v. Belmont*, 301 U.S. 324 (1937).

In *Pink* and *Blemont*, the United States Supreme Court refused to evaluate the Soviet expropriations under United States law and policy standards. The expropriations were acts of the Soviet government which the United States

Government endorsed by entering into the Litvinov Agreement. Accordingly, the *Pink* and *Belmont* courts would not allow the party challenging expropriation to raise due process issues or otherwise challenge the merits of the expropriations. Therefore, the court honored the Soviet expropriations and reversed the lower court decisions. IRAN's case is stronger than *Pink* and *Belmont* because there exist no *assigned* rights to enforce. IRAN pursues its *own* rights under THE DECREE for return of assets.

As the Department of State acknowledged in the Suggestion of Interest filed in the trial court on SHAMS' Demurrer, IRAN'S case is like *United States v. Pink, supra*, 315 U.S. 203 and *United States v. Belmont, supra*, 301 U.S. 324. (C.T. 804, fn. 6.) THE DECREE arises in the context of the Algerian Accords which call for decree enforcement in United States Courts. Hence, just as in *Pink* and *Belmont* the United State's policy favoring enforcement of THE DECREE could hardly be clearer.

Pink and *Belmont* rely on the United States Constitution, Article VI, and the supremacy of federal law and executive agreements over state law on matters of national affairs. *Pink* provides that:

> [S]tate law must yield when it is inconsistent with or impairs the policy or provisions of a treaty or of an international compact or agreement [. . .] then the power of a state to refuse enforcement of rights based on foreign law which runs counter to the policy of the forum [. . .] must give way before the superior federal policy evidenced by a treaty or international compact or agreement.

315 U.S. at 230-231

The Algerian Accords are United States law and policy. SHAMS' discovery demands under California State law violate the direct mandate of the Algerian Accords to United States courts. The Algerian Accords provide explicit and

supreme federal policy requiring immediate and full enforcement of THE DECREE. Further, the federal government of the United States demands THE DECREE's enforcement. Discovery has no role in this case. Therefore, dismissal on discovery grounds is reversible error.

II.

IRAN'S DECREE IS AN ACT OF STATE WHICH SHAMS CANNOT CIRCUMVENT THROUGH DISCOVERY

THE DECREE constitutes an act of state. Any question on the issue is a question of federal law which this court must review *de novo*. *Republic of Iraq v. First National City Bank*, 353 F.2d 47, 50 (2d Cir. 1966), *cert. denied*, 382 U.S. 1027 (1966).

THE DECREE seeks return of the wealth of the people of IRAN which SHAMS and IERSPEX embezzled and misappropriated. THE DECREE covers property of Iranian origin belonging to IRAN. (C.T. 91.) The United States Government filed a Suggestion of Interest in this case to state its position concerning THE DECREE. (C.T. 800-807.) The Suggestion of Interest provided that THE DECREE "can be interpreted as a demand for *return* of property. . . ." (C.T. 803, emphasis added.) The United States Government stated further that THE DECREE is *not confiscatory* and *should be enforced*. The Suggestion of Interest articulates no obligation for IRAN to respond to discovery. (C.T. 803-804.)

Pursuant to the act of state doctrine, United States Courts cannot adjudicate the validity of THE DECREE. Nor can purported discovery obligations circumvent IRAN'S right to enforce THE DECREE.

The United States Supreme Court embraced the act of state doctrine in *Underhill v. Hernandez*, 68 U.S. 250 (1897).

In *Underhill*, the Court rejected a plaintiff's claims for damages arising out of his detention in Venezuela by Hernandez, a revolutionary leader of a new Venezuelan Government. The Court ruled that because the detention was the act of a foreign state, a United States Court would not be competent to sit in judgment of the foreign state's act.

In *Underhill*, the Court stated language which has guided application of the act of state doctrine to date.[3] Specifically, the *Underhill* court stated:

> Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another, done within its own territory. Redress of grievances by reason of such acts must be obtained through the means open to be availed of by sovereign powers as between themselves.

168 U.S. at 252.

The *Underhill* Court stated further:

> If the party seeking to dislodge the existing government succeeds, and the independence of the government it has set up is recognized, then the acts of such government, from the commencement of its existence, are regarded as those of an independent nation.

Id. at 253.

---

[3] The act of state doctrine remains vital today to United States Courts in avoiding evaluation of other countries' official acts. *See W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp. Int'l.*, (1990) 493 U.S. 400 (refusing to evaluate a contract executed by Nigerian government) and *United States v. Merit*, (9th Cir. 1992) 962 F.2d 917 (refusing to evaluate extradition by South African government).

Clearly, this language validates the actions of IRAN's government and its rendering of THE DECREE. From the time IRAN took power, its decrees and acts, including THE DECREE, are act of an independent nation.

The United States Supreme Court reaffirmed the act of state doctrine in *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1963). In *Banco Nacional*, the Supreme Court applied the act of state Doctrine to uphold Cuba's expropriation of rights to sugar of Cuban origin. The expropriation came about through a law which followed Cuba's 1959 revolution. The Court rejected the expropriation opponent's conversion and breach of contract theories and declared that a counter-claim challenging the expropriation "must fail." *Id.* at 439.

In *Banco Nacional*, the Court also stated that "the act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." *Id.* at 401.

Significant to IRAN's case, in *Banco Nacional*, the expropriation opponent argued that a United States court should not recognize the Cuban act of state due to animosity in political relations between the United States and Cuba. In response, the Court unequivocally stated "we do not agree" with that contention. *Id.* at 410. The Court honored Cuba's expropriation. Similarly, THE DECREE should be enforced despite any political animosity between the United States and IRAN.

The *Banco Nacional* Court confirmed the practicality and efficiency of the act of state doctrine stating:

> An inquiry by United States Courts into the validity of an act of an official of a foreign state under the law of that state *would not only be exceedingly difficult but, if wrongly made, would be likely to be*

highly offensive to the state in question.

Id. at 415, fn. 17 (emphasis added).

Here, the United States Government supports IRAN's efforts to enforce THE DECREE as indicated in the Suggestion of Interest. (C.T. 800-807.) THE DECREE is an act of IRAN's government, performed within IRAN, which seeks to recover property belonging to the people of IRAN. The trial court failed to properly accord THE DECREE, as an act of state, the deference it warrants. SHAMS and IERSPEX cannot look behind THE DECREE to evaluate its merits through discovery, since the act of state doctrine and the Algerian Accords render THE DECREE a final, binding, and summarily enforceable governmental act.

III.

THE EXTRATERRITORALITY EXCEPTION TO THE ACT OF STATE DOCTRINE DOES NOT APPLY TO IRAN'S DECREE BECAUSE THE DECREE IS NOT CONFISCATORY

The extraterritoriality exception to the act of state doctrine does not apply to THE DECREE. Any question on the issue is one of federal law which this court must review *de novo*. *Republic of Iraq v. First National City Bank, supra*, 353 F.2d at 50.

The act of state doctrine precludes looking behind a foreign sovereign's official act to judge its validity. An exception to the act of state doctrine is "the extraterritorial exception," which provides that when inconsistent with the policies and law of the United States, our courts will not give extraterritorial effect to a confiscatory decree of a foreign state, even where directed against its own nationals. *Maltina Corp. v. Cawy Bottling Co.*, 462 F.2d 1021, 1025 (5th Cir. 1972), *cert. denied*, 409 U.S. 1060 (1972).

In *Republic of Iraq v. First National City Bank, supra*, the court stated: "When property confiscated is within the United States at the time of the attempted confiscation our courts will give effect to acts of state only if they are consistent with the policy and law of the United States." 353 F.2d at 51.

In *Maltina Corp., supra.* the court refused to allow confiscation of Cuban parent corporation's independent subsidiary operations and trademark within the United States. Likewise, in *Republic of Iraq, supra*, the court refused to enforce a foreign decree expropriating trust assets situated within the United States.

In *Republic of Iraq, supra*, 353 F.2d at 52, the court acknowledged that no law or international agreement existed demonstrating a United States policy favoring Iraq's decree. The United States Department of State disclaimed any interest in the outcome of the litigation. *Republic of Iraq* distinguished itself from *United States v. Pink, supra*, and *United States v. Belmont, supra*, where the United States had an international agreement with the Soviet Union and the United States accepted an assignment of United States interests expropriated by the Soviet government. In *United States v. Pink*, and *United States v. Belmont*, the United States Supreme Court found the Soviet expropriations were valid enforceable acts of state.

Similarly, the United States Department of State has endorsed, by its Suggestion of Interest, IRAN'S efforts to enforce THE DECREE. (C.T. 800-807.) The United States has an international agreement, the Algerian Accords, which establish law and a policy requiring enforcement of Iranian decrees. IRAN'S efforts to enforce THE DECREE bear extensive resemblance to the facts in *United States v. Pink* and *United States v. Belmont*, since IRAN seeks to enforce its governmental action in a United States court based upon an articulated policy favoring enforcement. As the Suggestion of Interest reflects, IRAN seeks to enforce THE

DECREE only to return assets belonging to IRAN, not to confiscate in violation of United States law and policy. (C.T. 803.)

* * *

APPENDIX N

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EXCERPTS FROM PETITION FOR REVIEW

[Filed in the Supreme Court of the State of California, Pages 2 through 3.]

* * *

ISSUES PRESENTED FOR REVIEW

Whether the Algerian Accords, as an executive agreement of the United States, and the act of state doctrine, as federal law, supersede California discovery laws and, therefore, preclude dismissal of an action for perceived failure to comply with state law discovery obligations.

* * *

APPENDIX O

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Decree of Imam Concerning Confiscation of the Pahlavi Properties Dated Wednesday 9th Esfand, 1357 (February 28, 1979)

In the Name of God the Most Beneficient

The Islamic Revolutionary Council is charged by virute of this decree with confisacting, favour of the needy, the poor workers and employees, all movable and immovable properties of the Pahlavi Dynasty, its branches, agents and affiliates who during their illegal rule embezzled it from the Treasury of the Moslems, and deposit the movable in banks in the account of the Revolutionary Council or in the name of the undersigned. The immovables such as real estates and lands be confiscated and registered so that it may be spent for the needy from all classes, for constructing houses and creating jobs, etc. I order all the Islamic Revolutionary Committees throughout the country to deposit in a known bank account all the valuables obtained by them, and to notify the government that such valuables do not belong to the government but they have to do with the Revolutionary Council. Whatever is or would be obtaiend by the government functionaries should be deposited in the banks in the same account. Those who have obtained such properties must immediately hand it over either to the committees or the banks. Violators (of the above order) would be reprimanded.

Ruhollah Moussavi Khomeini

APPENDIX P

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EXCERPTS FROM SUGGESTION OF INTEREST OF THE UNITED STATES OF AMERICA

[Filed in the Los Angeles Superior Court - Pages 4 through 7.]

* * *

1. The Iranian decree refers to property allegedly "embezzled" from Iran by defendants. It can be interpreted as a demand for return of property to the extent that the property is shown to have been illegally taken from the Iranian treasury. As such, it does not constitute, as defendants suggest, a "naked confiscation of property," and may be enforced in U.S. court in accordance with the provisions of U.S. law, including due process for defendants.

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). "The essence of due process is the requirement that 'a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.' " *Mathews v. Eldridge*, 424 U.S. 319, 348 (quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-172 (Frankfurter, J., concurring)). In the context of this case, if defendants are provided an opportunity to appear before this Court and respond to Iran's allegations concerning the assets allegedly taken illegally from Iran, then the requirements of due process will have been met.[6]

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[6] Defendant's reliance on *Republic of Iraq v. First Nat. City Bank*, 353 F.2d 47 (2d Cir. 1965), *cert. denied*, 382 U.S. 1027 (1966), is misplaced. The court there distinguished cases in which the Executive has entered into an international agreement concerning the enforcement of foreign decrees or where the Department of State has taken a position as to enforcement. *Id.* at 52. This case is more analogous to *United States v. Pink*, 315 U.S. 203 (1942), which was distinguished in *Republic of Iraq*. *See also United States v. Belmont*, 301 U.S. 324 (1937).

In sum, the Court should apply a flexible due process analysis that protects the rights of the individual defendants, but also preserves the rights of the Government of Iran under the Accords and the Executive Order, and promotes the purpose of Point IV of the General Declaration, which was to maintain access to U.S. courts on the part of Iran to recover assets that Iran could demonstrate were illegally taken from the Iranian Treasury.

* * *

Supreme Court, U.S.
FILED
OCT 21 1994
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No. 94-577

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1994

ISLAMIC REPUBLIC OF IRAN,
Petitioner,
v.
SHAMS PAHLAVI, AKA H.I.H. PRINCESS SHAMS PAHLAVI; IERSPEX FINANCE N.V.,
Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division One

RESPONDENTS' BRIEF IN OPPOSITION

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No. 94-577

In the Supreme Court

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OCTOBER TERM, 1994

ISLAMIC REPUBLIC OF IRAN,
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v.
SHAMS PAHLAVI, AKA H.I.H. PRINCESS SHAMS PAHLAVI; IERSPEX FINANCE N.V.,
Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division One

RESPONDENTS' BRIEF IN OPPOSITION

Respondents Shams Pahlavi and Ierspex Finance N.V. oppose the petition of the Islamic Republic of Iran for certiorari. As set forth below, the requirements for the issuance of a writ of certiorari have not been satisfied.[1]

COUNTERSTATEMENT OF THE CASE

Certain matters have been omitted or not fully stated in the Petition; this counterstatement will explicate them.

[1]There are no parent or subsidiary companies to be listed pursuant to Rule 29.

This case arose out of the notorious 1979 seizure of the American embassy in Tehran. Following the hostages' release in 1981, the Islamic Republic of Iran brought suit in California Superior Court, Los Angeles County, against respondents Shams Pahlavi, the late Shah's elder sister, and Ierspex Finance, N.V. The Islamic Republic sought recovery of more than $3 billion. The original complaint, filed in 1981, contained no mention whatsoever of a decree such as the one petitioner seeks to enforce here — even though the decree purportedly was issued more than two years earlier, in February 1979. Instead, mention of the decree first appeared twelve years later, in the First Amended Complaint, filed in 1991. Under California law, the statute of limitations is four years. CAL.CIV.PROC.CODE § 343.

The Shah abdicated his throne on January 16, 1979, and the Ayatollah Khomeini returned from exile in February. The very month he returned, Khomeini purportedly issued the "decree" which petitioner now seeks to enforce. No court has ever seen this decree, however. It was not attached to the Second Amended Complaint. Instead, petitioner appended a purported translation, which the California Court of Appeal reproduced verbatim in its opinion. (Petition, App. A 3 - A 4.)

Several aspects of the purported decree are notable. The translation obviously is poor and ambiguous, if in fact the decree exists at all. The decree uses the term "confiscation", but states that confiscated property does *not* belong to the government (a term that itself is not defined). At the time the decree purportedly was issued, the Ayatollah Khomeini had no recognized official status, at least as far as the rest of the world could tell. Iran was in political turmoil; Mehdi Bazargan, not Khomeini, was the prime minister; various political groups, some fundamentalist, some not, were just beginning to emerge. The Islamic Republic of Iran, the petitioner here, had not yet been formed; it would be nearly

another year before a constitution establishing that entity was ratified. S. BAKHASH *et al.*, IRAN: A COUNTRY STUDY (1987) at 48-49, 195.

In the trial court, the discovery propounded by Pahlavi addressed fundamental, but routine, issues of liability and damages raised by the decree and the complaint. For instance, the discovery sought authentication and production of the decree, as well as the identity of the translator. The discovery asked questions drawn directly from the allegations of the complaint, including asking for supporting facts and identification of witnesses. The discovery also sought such basic information as whether the Islamic Republic of Iran contended that Pahlavi had taken from Iran property that was not hers. Although petitioner had responded to discovery a decade ago in connection with a motion to quash service of process (*Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d 620, 628, 206 Cal.Rptr. 752, 756-57 (1984)), this time it took a different tack. It deliberately, knowingly and steadfastly refused to give answers to any of the discovery. (*See* Petition, App. A 8 - A 10.)

With these matters in mind, it is clear that the writ should not issue.

SUMMARY OF ARGUMENT

This case presents no issue suitable for review. Review could affect no one other than the parties to this specific dispute, for litigation under the provisions of the Algerian Accords at issue here already has concluded against other members of the Shah's family. Moreover, the courts in those cases reached the same conclusion as the court below, that the Accords provide no special status to the Islamic Republic. That conclusion, and the accompanying conclusion that assertion of the act of state doctrine does not free the Islamic Republic from the necessity of responding to discovery, clearly were correct.

REASONS FOR DENYING THE WRIT

I.

THE DECISION BELOW IS CONSISTENT WITH DECISIONS OF OTHER COURTS WHICH HAVE CONSIDERED THE MEANING OF THE ALGERIAN ACCORDS

In holding that the Algerian Accords do not insulate the Islamic Republic from discovery obligations, the California Court of Appeal acted consistently with every other court which has construed these provisions of the Accords. Each court has held that the Accords do not create special rules for the Islamic Republic. In California, the courts so held for the first time a decade ago, ruling — in this same case — that the Accords do not exempt the Islamic Republic from the usual jurisdictional requirements. *Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d 620, 206 Cal.Rptr. 752 (1984). The New York courts also have held that the Accords created no special rules for the Islamic Republic, ruling that the Accords did not strip the Shah's family of the defense of *forum non conveniens*. *Islamic Republic of Iran v. (Mohammed Reza and Farah Diba) Pahlavi*, 62 N.Y.2d 474, 478 N.Y.S.2d 597, 467 N.E.2d 245 (1984), *cert. denied*, 469 U.S. 1108 (1985); *Islamic Republic of Iran v. (Ashraf) Pahlavi*, 473 N.Y.S.2d 801 (1984), *aff'd mem.*, 486 N.Y.S.2d 939, 476 N.E.2d 338 (1985). In holding once again, this time in the discovery context, that the Accords do not create special rules for the Islamic Republic, the opinion below presents no novel issue or extraordinary interpretation for review by this Court.

Moreover, this case cannot have any impact beyond this specific situation. The provisions of the Accords at issue here concern only close members of the Shah's family. The opinion below concerned the assets of one family member, the Shah's elder sister. The New York litigation concerned

other family members — the Shah's wife, his other sister, the Shah himself and, after his death, the Shah's estate. That litigation has long since concluded. *Islamic Republic of Iran v. (Mohammed Reza and Farah Diba) Pahlavi, supra; Islamic Republic of Iran v. (Ashraf) Pahlavi, supra.* In every sense, then, this case is *sui generis*, and can have no impact beyond its specific facts.

II.

THE DECISION BELOW CLEARLY WAS CORRECT

A. The Ruling on the Algerian Accords Was Correct

The decision below was indisputably correct in recognizing that the Accords do not require United States courts to ignore due process and normal discovery rights. On their face, the Accords only obligate the United States to state its position that Iranian decrees are to be enforced in accordance with United States law. (Petition, App. G 1.) The United States fulfilled its obligation by stating its position. Even assuming that the Accords require the courts to do something other than receive the position of the United States, United States law throughout the country includes the right to discovery. If the Accords excluded the right to discovery, then the language "should be enforced ... in accordance with United States law" would mean that Iranian decrees must be enforced *without* regard to United States law. That is an absurd reading of the Accords: likening the Accords to a treaty, "[t]he clear import of treaty language controls unless 'application of the words of the treaty according to their obvious meaning effects a result inconsistent with the intent or expectations of its signatories.' [citation omitted.]" *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 180, 72 L.Ed.2d 765, 102 S.Ct. 2374 (1982).

The negotiating history corroborates the plain meaning of the Accords. The record confirms that United States commitments were limited, that confiscation of the Shah's family's assets would not be allowed, and that due process would be guaranteed. The negotiations were conducted by the Honorable Warren Christopher, who was then Deputy Secretary of State. Contrary to the representations made by Petitioner here — that the United States "undertook the duty to return assets to IRAN" (Petition at 9) — Secretary Christopher testified before Congress that such assets could be returned only if a court, having first guaranteed the defendant full due process of law, then ruled in favor of the Islamic Republic. For example, Secretary Christopher testified:

> Throughout the crisis, Iran insisted on a return of the wealth of the former Shah and his family. . . .
>
> During the negotiations, the U.S. never deviated from the position that under our system of government, the transfer of private property from one party to another can be ordered only pursuant to procedures which afford due process of law. Late in the negotiations Iran finally accepted that principle, and it is reflected in the Declarations. As a result, the Shah's estate and his close relatives will have full protection of due process of law with respect to claims against their properties by Iran.
>
> Under the Declarations (Paras. 12-15) the U.S. has agreed to take certain actions in connection with any lawsuits brought by Iran regarding the Shah's wealth, but these commitments are carefully limited. . . .
>
> In sum, the United States refused to return the Shah to Iran prior to his death, and it has also steadfastly refused to confiscate and transfer his U.S. assets, insist-

ing instead on the maintenance of the Constitutional requirements of due process of law.

Iran's Seizure of the United States Embassy: Hearings before the House Comm. on For. Affairs, 97th Cong., 1st Sess. (February 17, 19, 25 and March 11, 1981) 153-55.

Far from instructing the courts to return assets of the Pahlavi family to Iran, then, the Accords instead simply allowed the Islamic Republic access to American courts in an effort to demonstrate that the Islamic Republic had a legal right to those assets. But it was clear that the Islamic Republic was given no special preference in how the courts were to view any such case. Indeed, as an exchange between Secretary Christopher and Senator Lugar demonstrated, any litigation brought by the Islamic Republic would have to be evaluated by American courts, and even would be subject to the defense that the litigation failed to state a claim upon which relief may be granted:

> "SENATOR LUGAR. As a point of curiosity, in your prepared statement, Secretary Christopher, you mentioned the possibility that suits may come with regard to the Shah's property, perhaps to an individual alleged to be a close relative of the Shah. On what basis could such a suit be filed? In other words, is the basis that the Iranian Government believes that the Shah or his family confiscated wealth or property owned by Iran and is suing in our courts to take that property back?
>
> "MR. CHRISTOPHER. Yes, sir. Any number of courses of action are possible. The traditional one in that situation is to assert that the funds were embezzled from the country by either the leader of the country, or the former leader or his relatives, and to assert the legal right to the funds as having been illegally taken from the country.

> "SENATOR LUGAR. Then *our court would have to make a judgment on the question of embezzlement,* on the definition of that in international law, or on succession of authority and overthrows of governments, that sort of thing?
>
> "MR. CHRISTOPHER. Exactly — *and on whether or not there is a right within our legal system for Iran to assert that claim.* I think it would be a very difficult lawsuit."

The Iran Agreements: Hearings before the Senate Comm. on For. Relations, 97th Cong., 1st Sess. (February 17, 18 and March 4, 1981) 56 (emphasis added.)

In accord with this history, when the United States stated its official position in the trial court here it stated that Iran must prove its case; the United States gave its view that the decree "can be interpreted as a demand for return of property to the extent that the property *is shown* to have been illegally taken from the Iranian treasury." (Petition, App. P 1 (emphasis added).)

This history confirms that the words "in accordance with United States law" have the obvious meaning, that the provisions of United States law govern the course of any lawsuit which the Islamic Republic chose to bring. As a footnoted afterthought, however, the Islamic Republic asserts here that the phrase "in accordance with United States law" must mean something other than the normal litigation rules because the Islamic Republic had the right to bring suit in American courts even absent the existence of the Accords. (Petition at 8 n.1.) Although it did make this assertion in seeking review before the California Supreme Court, the Islamic Republic did not raise this argument either in the trial court or the California Court of Appeal which rendered the decision at issue.

The argument is wrong in any event. Historically, when a government was unrecognized — as was the case with the Islamic Republic of Iran at the time the Algerian Accords were signed, and remains so today — that government was *not* entitled to proceed in American courts. *Guaranty Trust Co. v. United States*, 304 U.S. 126, 137, 58 S.Ct. 785, 82 L.Ed. 1224 (1938); *cf. Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 410, 84 S.Ct. 923, 11 L. Ed.2d 804 (1964). The Algerian Accords thus gave the Islamic Republic an assurance of access to the courts when access might not have been granted otherwise. In fact, subsequent cases have identified the Algerian Accords as one basis for saying that the Islamic Republic of Iran may appear in United States courts even though the United States still does not recognize the government. *National Petrochemical Company of Iran v. M/T Stolt Sheaf*, 860 F.2d 551, 555 (2d Cir. 1988), *cert. denied*, 489 U.S. 1081, 103 L.Ed.2d 840, 109 S.Ct. 1535 (1989).

Nor does this case present any conflict with *United States v. Pink*, 315 U.S. 203, 86 L.Ed. 796, 62 S.Ct. 552 (1942) and *United States v. Belmont*, 301 U.S. 324, 81 L.Ed. 1134, 57 S.Ct. 758 (1937). The opinion below correctly recognized that the Islamic Republic's reliance on those cases is misplaced. (Petition, App. A 17.) Those cases discussed claims settlement arrangements which were part of the official recognition of the Union of Soviet Socialist Republics. *Pink* and *Belmont* held that federal treaty law was supreme over conflicting New York state law in determining the rights to assets assigned by the U.S.S.R. to the United States. Unlike *Pink* and *Belmont*, however, this case presents no question of federal supremacy over state law. Indeed, had the Islamic Republic filed its action in federal rather than state court, the issue, and the result, would have been the same: like the California statutes, the federal rules of civil procedure give parties the right to basic discovery. FED.R.CIV.P. 26-37. There is no conflict between a compact

that certain Iranian decrees and judgments "should be enforced . . . in accordance with United States law" and the use of United States law when those decrees and judgments are sought to be enforced.

B. The Ruling on the Act of State Doctrine Was Correct

Similarly, in holding that the act of state doctrine does not free the Islamic Republic from discovery obligations, the opinion below again maintains consistency with a long line of cases. Under the act of state doctrine, United States courts usually will not hear challenges to a foreign country's nationalization of American property located in that foreign country. In contrast, a long line of cases unwaveringly holds that when a foreign country seeks to apply its confiscation decrees extraterritorially, to property within the United States, our courts will not enforce them. As this Court has explained:

> In every case in which we have held the act of state doctrine applicable, the relief sought or the defense interposed would have required a court in the United States to declare invalid the official act of a foreign sovereign *performed within its own territory*.

W. S. Kirkpatrick & Co., Inc. et al. v. Environmental Tectonics Corp., International, 493 U.S. 400, 405, 107 L.Ed.2d 816, 110 S.Ct. 701 (1990) (emphasis added). The courts of appeals consistently have held that foreign acts of confiscation can have no effect in this country. *Republic of Iraq. v. First National City Bank,* 353 F.2d 47, 51 (2d Cir. 1965), *cert. denied,* 382 U.S. 1027 (1966); *Bandes v. Harlow & Jones, Inc.,* 852 F.2d 661, 666-67 (2d Cir. 1988); *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.,* 840 F.2d 72, 75 (D.C. Cir. 1988); *United Bank Ltd. v. Cosmic International, Inc.,* 542 F.2d 868, 877 (2d Cir. 1976); *Maltina Corp. v. Cawy Bottling Co.,* 462 F.2d 1021,

1025-27 (5th Cir.), *cert. denied* 409 U.S. 1060 (1972); *Zwack v. Kraus Bros. & Co.*, 237 F.2d 255, 259 (2d Cir. 1956).

In any event, no case holds that the mere *assertion* of the act of state doctrine eliminates the right to discovery. In this case, it was not even clear that an act of state was involved, and discovery certainly was necessary to probe that issue. *See, D'Angelo v. Petroleos Mexicanos,* 331 A.2d 388, 392 (Del. 1974) ("In the absence of a general appearance *and the proper pleading and proof of the defense* of the act of state doctrine, defendant is not entitled to judicial consideration of the effect of the act of state doctrine upon plaintiff's claim . . . .") (emphasis added.)

III.

THE RECORD PRESENTS INDEPENDENT GROUNDS FOR SUSTAINING THE DECISION BELOW

Resolution of the question presented does not change the outcome of the case. The decision must be upheld if it may be sustained on any theory presented by the record. Here several independent grounds support affirmance. The Islamic Republic of Iran did not plead a claim to enforce the decree until twelve years after it had been issued; thus the claim was barred by the statute of limitations. CAL.CIV.PROC.CODE § 343; *Dore v. Thornburgh* 90 Cal. 64, 27 P. 30 (1891). Such a claim does not lie in American courts in any event, as *Republic of Iraq* and its progeny demonstrate. As for the act of state doctrine, the Islamic Republic did not even assert it as an objection to the discovery at issue; under California law, it thereby waived the objection. *West Pico Furniture Co. v. Superior Court*, 56 Cal.2d 407, 414, 15 Cal.Rptr. 119, 364 P.2d 295 (1961); *see also Schaff v. Superior Court*, 146 Cal.App.3d 921, 923, 194 Cal.Rptr. 546 (1983).

CONCLUSION

The Islamic Republic took the extraordinary position that it need not respond to any discovery. The California Court of Appeal instead held the Islamic Republic to the ordinary standard of compliance with the rules. The decision presents no grounds for review, and certiorari should be denied.

Dated: October 21, 1994

Respectfully submitted,

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Supreme Court, U.S.
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No. 94-577

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ISLAMIC REPUBLIC OF IRAN,
Petitioner,
vs.
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Respondents.

PETITION FOR WRIT OF CERTIORARI
TO CALIFORNIA COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION ONE

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

REASONS FOR DISREGARDING RESPONDENTS' OPPOSITION AND GRANTING THIS PETITION FOR WRIT OF CERTIORARI

The turmoil which preceded the Algerian Accords is over. The responsibilities assumed, and obligations accepted, by the United States in adopting the Algerian Accords continue. Unless this Court confronts the seminal issue and enforces the Algerian Accords, IRAN will be irreparably prejudiced and Respondents' political propaganda (Opposition at 2-3) and misplaced reliance on politicians' rhetoric (Opposition at 7-8) will forever justify the dismissal of IRAN's Complaint in the minds of the lower court jurists that have ruled on this case to date.

I.

The Significance of the Issue Presented for Review and the Implications of the Lower Courts' Rulings Warrant Granting the Petition for Writ of Certiorari.

Uniformity of decision is not the issue. *Multiple* wrongs do not make a right. Prior omissions to recognize the intent of the parties to the Algerian Accords, and the implications thereof in related litigation, do not justify a decision by this Court to deny review.

The provisions of the Algerian Accords at issue in this case have general application. More cases of a similar nature have been filed (*e.g., Bank Melli Iran; Bank Mellat v. Shams Pahlavi, aka H.I.H. Princess Shams Pahlavi*, United States Court of Appeals for the Ninth Circuit, Case No. 94-55292). Similar cases will be filed in the future. The questions of

law involved here can also apply to future enforcement of treaties and executive agreements.

By inquiring into the significant interplay between an executive agreement and the act of state doctrine, as federal law, and state discovery law, this case is not the *sui generis* aberration Respondents portray. (Opposition at 3-5.) This case presents important questions of law under Supreme Court Rule 10.1(c).

II.

That the Algerian Accords and Act of State Doctrine are Supreme Federal Law Cannot Be Disputed or Refuted; Nor Can Their Incompatibility with California's Discovery Laws as Indisputably Indicated by Dismissal of Petitioner's Complaint.

Respondents cannot dispute or refute the supremacy of federal law, as set forth in the Algerian Accords and the act of state doctrine, over California's discovery laws. (Petition at 8-15.) The fact that IRAN's Complaint was dismissed shows the obvious incompatibility. The Algerian Accords do not allow the merits of THE DECREE to be questioned. This is evident not only from the provisions of the Algerian Accords, but from the United States Government's Suggestion of Interest (Petition, App. P.), and more importantly, from comments made by the United States' negotiator of the Algerian Accords.

A. IRAN Has Urged the Supremacy of the Algerian Accords and the Act of State Doctrine Over California Discovery Laws Throughout This Action. Respondents' Contention that IRAN Recently Introduced a New Interpretation of the Algerian Accords Lacks Merit.

IRAN's interpretation of the Algerian Accords' provision "in accordance with United States law" and its obvious deeper meaning has rightfully formed the foundation of IRAN's claim throughout this action. Respondents' attempt to characterize IRAN's justifiable interpretation of the Algerian Accords as a new argument, introduced on appeal for the first time, is not supported by the facts or Respondents' misinterpretation of *National Petrochemical Company of Iran v. M/T Stolt Sheaf*, 860 F.2d 551 (2d Cir. 1988), *cert. den.* 489 U.S. 1081 (1989).

IRAN's ability to proceed in United States courts predated the Algerian Accords. Respondents now challenge that ability. IRAN refutes Respondents' contention, purportedly based on *National Petrochemical, supra*, that the Algerian Accords, alone, provide IRAN access to United States courts.[1] In fact, Respondents acknowledge multiple avenues

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[1] The Brief filed on behalf of the United States government as *Amicus Curiae* in *National Petrochemical* clearly indicates the Executive Branch of the United States Government recognized the then government of IRAN on February 16, 1979, prior to adoption of the Algerian Accords. The United States Government's firm statement on the issue, which is in line with the *National Petrochemical* court's ultimate decision on the issue, refutes Respondents' bald assertion regarding the Accords.

The United States Government's *Amicus Curiae* brief stated, at page 9, in pertinent part: [footnote 10:]

See J. Hervey, *The Legal Effects of Recognition in International Law* 3 (1928) ("courts are unanimously agreed that recognition by the political departments of the government is binding upon the

(continued)

of access for IRAN to United States courts by discussing "traditional" and other "courses of action" by which IRAN can enforce its rights against the Shah and his close relatives. (Opposition at 7-8.)

B. The Intent of the Algerian Accords is Clear: THE DECREE Must be Enforced, and, IRAN's Claim May Not be Derailed by Incompatible State Discovery Law.

THE DECREE must be enforced. IRAN's claim must not be derailed by incompatibilities between California's

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(fn. continued)
courts. They cannot enter into an independent examination in order to determine for themselves which is the lawfully instituted government in a designated territory . . . .")

* * *

[full text:]

II. The Government of Iran and its Instrumentalities are Entitled to Access to U.S. Courts

The Executive Branch made a formal statement of recognition and instituted diplomatic relations with the first revolutionary government of Iran, that of Mehdi Bazargan, on February 16, 1979. On that date, State Department press spokesman Hodding Carter III stated as follows: [footnote 11 omitted]

> Our ambassador has relayed to the Government in Iran our intention to maintain diplomatic relations with that Government. This is the formal declaration that our relations do continue . . . . It [the Ambassador's statement] recognizes the government which is in power in Iran, which is headed by Prime Minister Bazargan. . . . We recognize that Government. They will have to say what the status of the Shah is.

discovery laws and the purpose and intent, whether obvious or implicit, of the Algerian Accords. (Petition, App. G, J.)

Respondents have introduced alternative interpretations of the Algerian Accords, and related implications thereof, while persisting with their interpretation that the Algerian Accords require discovery. (Opposition at 5-8.) Thus, Respondents explore the possibility of an ambiguity in the terms of the Accords.

The scope of the United States' obligations under the terms of the Algerian Accords, with respect to the return of the assets of the Shah and his close relatives to IRAN, is a highly-contentious issue. That issue must ultimately be decided by the Iran-United States Claims Tribunal considering the intent and positions of both governments during the negotiation of the Algerian Accords.

Respondents' position that state law discovery obligations bind IRAN is unfounded. The United States Government's position on that point is clear from sources including the Suggestion of Interest (Petition, App. P) and negotiators' statements.

Respondents reference statements made by the United States' negotiators of the Algerian Accords to support their position that enforcement of THE DECREE under the Algerian Accords requires compliance with California's discovery laws. (Opposition at 6-8.) However, a comment made by Mr. Warren Christopher, one of the United States' negotiators, shows how proper administration of the Algerian Accords supplants state discovery law.

Point IV, Paragraph 13 of the Algerian Accords, addresses the reporting of property in the United States owned by the Shah or his close relatives.[2] Mr. Christopher acknowledged

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[2] Paragraph 13 provides:

> 13. Upon the making by the Government of Algeria of the certification described in

(continued)

that the reporting mechanism within the Algerian Accords serves a function akin to, but different from, discovery.[3] If the United States Government did not intend for the Algerian Accords to supersede state discovery laws, why would the United States Government agree to Paragraph 13, effectively a vehicle to provide IRAN information which, as Mr. Christopher noted, could otherwise be derived through discovery?

Regardless of the conclusion one reaches after analyzing the implications of Mr. Christopher's comment, it remains clear that omission of discovery from the underlying proceedings does not deny due process to Respondents. The United States Government's Suggestion of Interest (Petition,

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(fn. continued)

> Paragraph 3 above, the United States will order all persons within U.S. jurisdiction to report to the U.S. Treasury within 30 days, for transmission to Iran, all information known to them, as of November 3, 1979, and as of the date of the order, with respect to the property and assets referred to in Paragraph 12. Violation of the requirement will be subject to the civil and criminal penalties prescribed by U.S. law.

[3] Mr. Christopher's exact words were:

> Once a close relative has thus been served in litigation, persons with information about property in the United States will be required to report it to the Treasury. I think most lawyers will recognize that the kind of information required to be furnished to the Treasury is the same kind of information that would be available to any diligent plaintiff in a lawsuit under our normal civil discovery procedures.

Iran's Seizure of the United States Embassy: Hearings Before the House Committee on Foreign Affairs, 97th Cong., 1st Sess. (February 19, 1981), 142.

App. P.) states Respondents' due process interests will be protected if they are afforded the opportunity to appear and respond to IRAN's allegations.

Considering these points, and the Government's analogy of this case to *United States v. Pink*, 32 N.E.2d 552 (N.Y. 1940), *rev'd* 315 U.S. 203 (1942), and *United States v. Belmont*, 85 F.2d 542 (2d Cir. 1936), *rev'd* 301 U.S. 324 (1937), the United States Government plainly intended the Algerian Accords to supersede state discovery laws. *Pink* and *Belmont* did not permit due process challenges to Soviet expropriations. This means enforcement of Soviet, or Iranian, expropriations conforms with due process of law.

Respondents' attempt to liken this case to prior litigation against the former Shah and his other relatives lacks merit and must fail. "[E]very other" case referred to by Respondents (Opposition at 3-4.) involved issues other than discovery obligations. Namely, in *Islamic Republic of Iran v. Pahlavi*, 160 Cal.App.3d 620, 206 Cal.Rptr. 752 (1984), the issue was exercise of personal jurisdiction. The other cases are *Islamic Republic of Iran v. Pahlavi*, 62 N.Y.2d 474, 478 N.Y.S.2d 597, 467 N.E.2d 245 (1984), *cert. den.* 469 U.S. 1108 (1985); and *Islamic Republic of Iran v. Pahlavi*, 473 N.Y.S.2d 801 (1984), *affd. mem.*, 486 N.Y.S.2d 939, 476 N.E.2d 338 (1985), where the issues concerned application of the doctrine of *forum non conveniens*.

III.

Resolution of the Issue Presented for Review Changes the Outcome of This Case. The Lower Courts Agreed That No Independent Grounds Exist to Support the Decision Below.

A. There is No Limitation Issue.

Respondents' contention that IRAN's claim is barred by the statute of limitation in California Code of Civil Procedure Section 343 and does not relate back to IRAN's original Complaint (Opposition at 2, 11) is meritless. Respondents raised the same argument in a Demurrer which was overruled. (Petition at 4.) As before, Respondents' reliance on California Code of Civil Procedure Section 343 and *Dore v. Thornburgh*, 90 Cal. 64 (1891), is misplaced. Respondents' authority, and the other authorities to support their conflicting statute of limitation arguments do not apply to an action brought under an executive agreement and supported by the act of state doctrine. Moreover, THE DECREE constitutes a *continuing* act of state.

IRAN's original Complaint, First Amended Complaint, and Second Amended Complaint, each sought to enforce the same rights contemplated by THE DECREE. Therefore, IRAN's Second Amended Complaint relates back to the original Complaint. *Austin v. Massachusetts Bonding and Ins. Co.*, 56 Cal.2d 596 (1961).

B. There is No Unenforceable "Confiscation."

Respondents' contention that IRAN's claim relies on an unenforceable confiscation also lacks merit. (Opposition at 10-11.) Respondents also raised this argument in their Demurrer and the argument was rejected when the trial court overruled the Demurrer. (Petition at 4.) For the reasons stated above, THE DECREE is not confiscatory. This case is analogous to *United States v. Pink, supra*, and *United States v. Belmont, supra*. (Petition, App. P.) The cases Respondents

cite concerning unenforceable confiscations are all distinguishable.[4]

C. There was No Waiver. THE DECREE is a Valid Act of State.

Respondents also contend IRAN waived its right to raise the act of state doctrine based on IRAN's failure to specifically reference the act of state doctrine in its objections to the underlying discovery. (Opposition 2, 10-11). This contention lacks merit. IRAN objected in writing to the discovery requests based on the Algerian Accords. When Respondent PAHLAVI moved to compel discovery responses from IRAN, and later to dismiss IRAN's Second Amended Complaint, IRAN included the act of state doctrine argument in its oppositions. (Petition, App. K, L.)

Respondents failed to raise to the lower courts, either in their papers or during oral argument, any perceived waiver of the act of state doctrine by IRAN. For these and other reasons, Respondents have waived their argument that IRAN waived its right to raise the act of state doctrine.

Further, IRAN's discovery objections were clearly based on the Algerian Accords. As an executive agreement, the

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[4] None of the cases involve executive agreements or treaties commanding enforcement of foreign decrees or judgments. *See W.S. Kirkpatrick & Co., Inc., et al. v. Environmental Tectonics Corp., International*, 493 U.S. 400 (1990); *Republic of Iraq v. First National City Bank*, 353 F.2d 47 (2d Cir. 1965), *cert. den.*, 382 U.S. 1027 (1966); *Bandes v. Harlow & Jones, Inc.*, 852 F.2d 661 (2d Cir. 1988); *Williams & Humbert Ltd. v. W. & H. Trade Marks (Jersey) Ltd.*, 840 F.2d 72 (D.C. Cir. 1988); *United Bank Ltd. v. Cosmic International, Inc.*, 542 F.2d 868 (2d Cir. 1976); *Maltina Corp. v. Cawy Bottling Co.*, 462 F.2d 1021 (5th Cir. 1972), *cert. den.*, 409 U.S. 1060 (1972); *Zwack v. Kraus Bros. & Co.*, 237 F.2d 255 (2d Cir. 1956). *Republic of Iraq, supra*, expressly refused to enforce an Iraqi act due to the absence of an executive agreement or treaty.

Algerian Accords clearly constitute acts of both the United States Government and IRAN's government. These sovereign acts, in issuing THE DECREE and negotiating and signing the Algerian Accords, qualify as acts of state under *Underhill v. Hernandez*, 168 U.S. 250 (1897), and *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964). Thus, IRAN's discovery objections based on the Algerian Accords foreclose Respondents' waiver argument. IRAN further ratifies THE DECREE as an act of state by pursuing this enforcement action.

Respondents' efforts to thwart application of the act of state doctrine fall flat. Respondents' reliance on *D'Angelo v. Petroleos Mexicanos*, 331 A.2d 388, 392 (Del. 1974), is misplaced. *D'Angelo* is clearly distinguishable from the instant case. *D'Angelo* concerned a challenge to subject matter jurisdiction premised on an act of state defense in a Delaware civil action. The act of state is not here and cannot be used as a *defense* to a claim based on the Algerian Accords. (Petition, App. G.)

CONCLUSION

For the foregoing reasons, and those stated in the Petition for Writ of Certiorari, the Petition should be granted.

Dated: November 2, 1994.

Respectfully submitted,

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